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59/09/09

AMENDED AND RESTATED

**DECLARATION OF CONDOMINIUM**

**OF**

**TERRACES OF ROSE PARK CONDOMINIUM PROJECT**

**IN**

**SALT LAKE COUNTY, UTAH**

EXCEPT IN VERY LIMITED CIRCUMSTANCES  
RESIDENCY IS RESTRICTED  
TO  
PERSONS OF AGE 55 AND OLDER  
AND  
NO CHILDREN RESIDENTS  
UNDER AGE 21 ARE PERMITTED

THIS IS A REGISTERED  
NO SMOKING PROJECT

NO PETS ALLOWED

(Carefully read the declaration and in particular Section 9 for an  
explanation of these IMPORTANT restrictions)

AMENDED 7 January 2009

\* THIS DOCUMENT BEING RE-RECORDED  
to ADD the Bylaws

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BY: ULR, DEPUTY - WI 39 P.

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**  
**OF**  
**TERRACES OF ROSE PARK CONDOMINIUM PROJECT**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM ("Declaration") is made as of the date of the recording in the Salt Lake County Recorder's Office by Terraces of Rose Park HOMEOWNERS ASSOCIATION ("Association") pursuant to the Utah Condominium Ownership Act.

RECITALS

1. Capitalized terms in this Declaration are defined in Article I.
2. The real property situated in Salt Lake County, Utah, described in Exhibit "A," attached to and incorporated in this Declaration by reference (the "Parcel"), was previously submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project now consisting of 94 residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the "Condominium Project").
3. The "Declaration of Covenants, Conditions, and Restrictions for TERRACES OF ROSE PARK CONDOMINIUM PROJECT," was recorded on September 4, 1963, beginning at book 2094, page 401, with entry No. 1943885, at the office of the Recorder of Salt Lake County.
4. The Association, consistent with the prior recorded Declarations and any amendments thereto (including any not herein referenced above), hereby adopts this Declaration, which (along with any future amendments) shall be the sole declaration for TERRACES OF ROSE PARK CONDOMINIUM PROJECT and which shall amend and completely replace all prior recorded Declarations, Bylaws and amendments thereto recorded prior to the date of this Declaration. This Declaration is adopted consistent with the procedures for amending the prior Declaration. It is adopted to update the Declaration, to eliminate ambiguity, to further define the rights of the Association and the Unit Owners, to establish that the community shall be a 55 and older community, to provide specifically for the ability to more easily amend, change, and correct the Plat under various circumstances and for various purposes, and in furtherance of the Association's efforts to safely, efficiently, and economically provide a quality living environment.
5. The Association hereby desires to establish, for its own benefit and for the mutual benefit of all future Unit Owners and Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein, (collectively, the "Restrictions," which shall run with and be a burden upon the Property).
6. The Association intends that the Unit Owners, Occupants, Lenders and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management and enjoyment thereof.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Association, hereby amends and replaces all prior Declarations and Bylaws for TERRACES OF ROSE PARK CONDOMINIUM PROJECT (which shall be referred to herein as "The Project") with the following Declaration and included Bylaws:

## ARTICLE 1

### DEFINITIONS

As used herein, unless the context otherwise requires:

1.1 "Act" shall mean the Condominium Ownership Act, codified beginning at Section 57-8-1, Utah Code Annotated, pertaining to the creation, ownership and management of a condominium project in the State of Utah, as the same may be amended from time to time. This Association is specifically made subject to future amendments to the Act. Any interpretation, rights, and remedies available to any Unit Owner or the Association shall be based upon and determined by this declaration and amendments thereto, the Act as it exists at the time of making the determination, and any other applicable documents such as the Bylaws, any Articles of Incorporation, and similar documents.

1.2 "Allocated Interest" shall mean the undivided 1/94<sup>th</sup> interest in the Common Area, the Common Expense liability, and votes in the Association allocated to each Unit.

1.3 "Articles" shall mean the Articles of Incorporation, or the chartering document of any other legal entity, if any shall be formed for the Association.

1.4 "Assessments" shall mean any charge imposed or levied by the Association against Unit Owners including but not limited to those related to Common Expenses as well as miscellaneous special assessments, special assessments for capital improvements, special assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, and fines, all as provided in this Declaration.

1.5 "Association" shall refer to TERRACES OF ROSE PARK HOMEOWNERS ASSOCIATION, whose membership shall include each Unit Owner in the Condominium Project, as required by the Act. The Association may be incorporated as a Utah nonprofit corporation or other legal entity at the discretion of the Management Committee and may utilize such name that the Management Committee shall select in any such incorporation or organization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.

1.6 "Bylaws" shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The initial Bylaws are attached to and incorporated by reference in this Declaration as Exhibit "B."

1.7 "Committee Member" shall mean a duly qualified and elected or appointed member of the Management Committee and previously referred to as Board Member.

1.8 "Common Area" shall, unless otherwise provided in this Declaration or any Supplemental Declaration, mean and refer to:

- (a) Those common areas and facilities specifically set forth and designated as such in the Plat,
- (b) Those parts of the Condominium Project not specifically included within the respective Units as hereinafter defined;
- (c) All foundations, columns, girders, beams, supports, main walls, roofs, halls, hallways, stairs, stairways, corridors, breezeways, lobbies, fire escapes, entrances, exits, walkways, driveways, gates, parking areas, yards, gardens, fences, swimming pools, and incineration and other community facilities contained within the Condominium Project and in general all apparatus and installations included within the Condominium Project existing for common use thereon, therein, or in connection therewith which are or may be necessary or convenient to the existence, maintenance, safety and management of the Condominium Project;
- (d) Those portions of the utility lines and facilities contained within the Condominium Project which are not owned by a public utility and which are not contained within the boundaries of a Unit as herein defined.

1.9 "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), extermination, security, gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Management Committee if allowed in this Declaration; (f) the establishment of reasonable reserves as may be required in this Declaration or, if left to the discretion of the Management Committee, as the Management Committee shall deem appropriate in its discretion; (g) expenses agreed upon as Common Expenses by the Association; and (h) other miscellaneous charges incurred by the Association or the Management Committee pursuant to the Act, this Declaration, the Bylaws or the Rules.

1.10 "Condominium Project" shall mean this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided 1/94<sup>th</sup> interest in the Common Area of the Property, are owned separately.

1.11 "Declaration" shall mean this Declaration, including all attached exhibits, which are incorporated by reference, and any and all amendments and supplements to this Declaration.

1.12 "Eligible Mortgagee" shall mean and refer to a First Mortgagee, which has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

1.13 "FNMA" shall mean and refer to the Federal National Mortgage Association.

1.14 "First Mortgagee" shall mean any person named as a Lender under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.

1.15 "Insurance Trustee" shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.

1.16 "Lender" shall mean a holder of a Mortgage or Deed of Trust on a Unit.

1.17 "Limited Common Area" shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.

1.18 "Management Committee" shall mean the Management Committee of the Association elected pursuant to the Bylaws and serving as the management body of the Association which has also been known as the Board of Trustees and as the Board of Directors.

1.19 "Occupant" shall mean a Person or Persons, other than a Unit Owner, in possession of, using, entering into, or living in a Unit, including, without limitation, family members, tenants, guests, or invitees. Occupants shall include any trespassers in a Unit if the Unit Owner fails to secure the unit against trespass, fails to take all action necessary and appropriate to remove trespassers immediately upon notice of the trespass, or fails to take reasonable measures to be made aware of any unauthorized occupants in the unit or of any unauthorized entry and use of the Unit.

1.20 "Parcel" shall mean the real property legally described in Exhibit "A."

1.21 "Person" shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.22 "Plat" shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments thereto. "Flat" shall also refer to any additional plat that may be recorded with any Supplemental Declaration.

1.23 "Property" shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.24 "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

1.25 "Rules" shall mean and refer to those rules adopted by the Management Committee.

1.26 "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Salt Lake County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.27 "Unit" shall mean and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat as they are specifically defined on the Plat and herein.

Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.

1.28 "Unit Number" shall mean the number, symbol or address that identifies one Unit in the Condominium Project.

1.29 "Unit Owner" shall mean and refer to the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Salt Lake County, Utah. However, Unit Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation.

## ARTICLE 2

### THE CONDOMINIUM PROJECT

2.1 Submission. The Association hereby confirms that the Parcel is a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and the Association hereby declares and agrees that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Unit Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

2.2 Name and Location. The Condominium Project shall be named and known as TERRACES OF ROSE PARK. The Condominium Project is located in Salt Lake County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel set forth on Exhibit "A." The name of the Association is TERRACES OF ROSE PARK OWNERS ASSOCIATION. If the name of the Condominium Project is ever found to infringe on another legal name, copyright, or other legal right, or its use becomes distasteful, inappropriate, or unwanted for any other reason, as determined by the Management Committee in its sole discretion, the Management Committee may utilize another name for the Association and for the common use of the Association. In such a case, the legal name of the Condominium Project may remain the same or be changed, as the Management Committee may determine in its sole discretion. Any decision by the Management Committee to change or utilize another name must be by unanimous consent of all members of the Management Committee.

2.3 Interpretation of Declaration and Applicability of the Act. The Association intends that 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.

## ARTICLE 3

### DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, COMMON AREA, ALLOCATED

## INTERESTS AND PLAT

### 3.1 Description of Boundaries of Each Unit and Unit Number.

(a) Description of and Boundaries of each Unit. Subject to the following descriptions of particular items, each Unit shall consist 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 shall be part of the Unit. The cubic content space and Unit Number of each of the Units within the Condominium Project are set forth on the Plat. Each Unit shall include the walls and partitions which are wholly contained within a designated Unit and the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings. The Unit shall not, however, be deemed to include the undecorated and/or unfinished surfaces of the perimeter of the walls, floors, and ceilings surrounding such Units, except as shown otherwise on the Plat, nor shall it be deemed to include pipes, wires, conduits, or other public utility lines running through such Units which are utilized for or serve more than one Unit.

(b) Variances between Plat and as-built construction. If the original as-built construction of the Project varies from any horizontal or vertical measurement on the Plat, the original construction, to the extent ascertainable, shall be the controlling dimension in any Unit. The original construction shall be the first installation of framing and wallboard. If the Management Committee determines (in its sole discretion) that the current construction varies from the Plat and that the location of the original as-built construction is uncertain (i.e., the Management Committee decides that it cannot determine with a reasonable degree of certainty that the current construction is the original as-built construction), the Management Committee may, at the expense of the Association or the Unit Owner, in the Management Committee's discretion, require that the current construction be made to comply with the Plat.

### 3.2 Description of Limited Common Area.

(a) Parking. The carports set forth on the Plat and designated in this Declaration for a respective Unit shall be Limited Common Area for the Unit and such Unit Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit. Notwithstanding anything to the contrary in this Declaration, a Unit Owner may exchange or rent their assigned space to another Unit Owner ONLY by preparing, signing and dating an agreement to do so and submitting a copy of the signed and dated agreement to the Association Board of Directors. The submitted agreement will become null and void when the Unit of either signer changes ownership.

(b) Patios. The patios (if any) and any space set forth on the Plat and designated in the Plat or this Declaration for use by a respective Unit or as Limited Common Area shall be Limited Common Area for the Unit and such Unit Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit.

(c) Other. Any shutters, awnings, window boxes, doorsteps, 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.

3.3 No Severance of Limited Common Area. 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.

3.4 Division into Units. The Condominium Project consists of Building A with 24 Units, Building B with 24 Units, Building C with 24 Units, Building D with 18 Units, Building E with 2 Units,



Building F with 2 Units, as set forth on the Plat, each such Unit consisting of a Unit and an appurtenant undivided 1/94th interest in and to the Common Area.

3.5 Allocated Interest of Each Unit in the Votes of the Association. The designation of the Allocated Interest that each Unit has in the votes for all matters related to the Association is provided for on the Plat.

3.6 Allocated Interest of Each Unit in the Common Expenses of the Condominium Project. The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium Project is provided for in the Plat.

3.7 Plat. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

#### ARTICLE 4

##### MAINTENANCE AND UTILITIES

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

- (a) All interior and exterior doors, including thresholds and door jams;
- (b) All paneling, tiles, wallpaper, paint, carpet, finished flooring, fireboxes of fireplaces, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;
- (c) All windows and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass);
- (d) All sewer and drainage pipes, water, power, and other utility lines in a Unit Owner's Unit and those serving a Unit Owner's Unit between the points at which the same enter the Unit Owner's Unit and the points where the same join the utility lines serving other Units;
- (e) Any of the following located wherever they might be located (inside or outside of the Unit) that serve a Unit Owner's Unit exclusively: lighting fixtures, fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as a Unit Owner may install.

4.2 Modifications to Units.

- (a) A Unit Owner may make nonstructural alterations within the Unit Owner's Unit, but a Unit Owner shall not make any alterations to any part of the Unit on the exterior of a building (such as windows, light fixtures, skylights, and exterior doors), the Common Area, or the Limited Common Area without the prior written approval of the Management Committee. The Management Committee

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 requirements or standards.

(b) **Remodeling and Extensive Maintenance.** Before a Unit Owner engages in any remodeling (which shall include but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, ceramic tile or hardwood floors; 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, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling), the Unit Owner shall first notify the Association 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 shall begin, (4) the date the remodeling is expected to be completed, (5) the names and contractor's license numbers of all contractors expected to perform work in the remodeling, (6) any expected nuisance that the remodeling shall create such as noise or dust, (7) and the Unit Owner's proposal for mitigating any expected nuisance. Without prior written permission of the Management Committee, none of the following shall occur in any remodeling: (1) any use of the common area for staging, storage, assembly, or construction, (2) any nuisance, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

#### 4.3 Maintenance of Common Area and Limited Common Area

(a) **Maintenance of Common Area.** Except as otherwise provided specifically herein, the Association, through the Management Committee or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall also remove snow from any sidewalks running throughout the Condominium Project and any Common Area parking and any Limited Common Area driveways, parking, and walkways immediately in front of each Unit and as necessary to allow vehicle and pedestrian access to each Unit. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(b) **Maintenance of Limited Common Area.** The Management Committee may, by rule or resolution, designate the maintenance responsibilities related to the Limited Common Area except as it relates to the covered Parking. The Association shall repair, maintain, and replace any covered parking structures. In absence of any rule or resolution designating the maintenance responsibilities of the other Limited Common Area, the following provisions shall apply to maintenance of the Limited Common Area. The Association shall be responsible for repairing and maintaining any structural portions of the Limited Common Area including but not limited to any concrete, railings, structures, and fences that border Limited Common Area and Common Area. The Unit Owner shall be responsible for repairing, replacing, and maintaining all of the following to the extent located in Limited Common Area: lighting fixtures, fans, plumbing, intercoms, security systems, fences not bordering Common Area, landscaping, trees, grass, doors, electrical components, and such other fixtures and decorations as a Unit Owner may be allowed to install. The Unit Owner shall also be responsible for making sure Limited Common Area that is within a Unit Owner's exclusive control is maintained in a clean and sanitary condition, free of pests and rodents, and uncluttered. A Unit Owner shall not alter any fixture in or structural portion of the Limited Common Area without the prior written approval of the

Management Committee, and the Management Committee may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person or company, or that they comply with particular materials requirements or standards.

(c) Standard of Maintenance. The Management Committee shall determine, in its sole discretion, the appropriate maintenance of the Common Area and Limited Common Area so long as the Association is maintained in the best interests of the Unit Owners.

(d) Assessment of Maintenance Expenses to Specific Unit Owner. If the need for maintenance or repair is caused through the willful or negligent act of a Unit Owner or an Occupant, the Management Committee may cause the maintenance or repair to be made. In such a case, the Association shall assess to the Unit Owner the reasonable cost of such maintenance or repair.

4.4 Default in Maintenance. If a Unit Owner or Occupant fails to (1) maintain a Unit or exclusive Limited Common Area as provided by 4.1 above; (2) make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the attractive appearance and value of the Condominium Project; or (3) observe any Restrictions imposed on such Unit Owner or Occupant by the terms of this Declaration, the Bylaws or the Rules, then the Management Committee or its authorized representative may give written notice to such Unit 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 fourteen (14) days after the giving of such written notice. If the Unit Owner or Occupant fails to carry out such action within the period specified by the notice or as required following the hearing before the Management Committee in accordance with Section 5.15, the Management Committee may cause corrective action to be taken and may levy a special Assessment for the cost thereof on the Unit Owner. The special Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in Section 6.1 of this Declaration.

4.5 Utilities. All utilities for individual Units (except water) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Unit Owners.

## ARTICLE 5

### MANAGEMENT

5.1. Organization of Association. The Association shall serve as the governing body for all Unit Owners. The Association shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, any Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Unit Owners in accordance with this Declaration, the Articles and the Bylaws. Except as specifically authorized in this Declaration, any Articles, or the Bylaws, no Unit Owner or group of Unit Owners shall have authority to take any action on behalf of the Unit Owners, the Association, or the Management Committee.

5.2 Legal Organization. The Association, in the discretion of the Management Committee shall be entitled to organize as a nonprofit corporation or other legal entity that may be selected by the Management Committee. The Management Committee may select the name for this entity, which shall, to the extent reasonably possible, be consistent with the name of the Association. In the Management Committee's sole discretion, the Bylaws of the Association, attached hereto, may be adopted, in part or in whole, as the Bylaws of any corporation or legal organization of the Association, or the Association may adopt additional Bylaws related to the legal organization of the Association not inconsistent with the Declaration and Bylaws.

5.3 Membership. Membership in the Association shall at all times consist exclusively of the Unit Owners. Each Unit Owner shall be a member of the Association so long as such Unit Owner owns a Unit and such membership shall automatically terminate when the Unit Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. The Association shall make available to the Unit Owners, Lenders and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of this Declaration, Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association. The term "available" as used in this Section 5.3 shall mean available for inspection within a reasonable time after receiving a request, during normal business hours or under other reasonable circumstances.

5.4 Voting. Except as otherwise disallowed in this Declaration or the Bylaws, Unit Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Unit Owner at any meeting of the Unit Owners.

5.5 Management Committee. The governing body of the Association shall be the Management Committee, previously known as the Board of Directors, elected pursuant to the Bylaws. The Management Committee shall consist of three (3) to nine (9) members. Except as otherwise provided in this Declaration or the Bylaws, the Management Committee may act in all instances on behalf of the Association. The Management Committee may, as it deems appropriate, recommend amendments to the Bylaws and Declaration and adopt, amend and repeal the Rules.

5.6 Qualification of Committee Members. All members of the Management Committee must reside in the Project. Each Committee Member shall be a Unit Owner or the spouse of a Unit Owner, but no two members of the Management Committee may reside in the same Unit or be the spouse of one another. If a Unit Owner is a corporation, partnership, limited liability company, or trust, a Committee Member may be an officer, partner, member, manager, trustee or beneficiary of such Unit Owner so long as they reside in the Project. If a Committee Member ceases to meet any required qualifications during the Committee Member's term, such person's membership on the Management Committee shall automatically terminate.

5.7 Action by Management Committee and Unit Owners. Except as specifically provided herein, the Management Committee and any individual Unit Owner have no authority to and may not act on behalf of the Association to amend or terminate this Declaration, to elect or remove

members of the Management Committee (except in filling vacancies in its membership for the unexpired portion of any term for which a Committee member has resigned or been removed), or to establish or change the qualifications, powers and duties, or terms of the Management Committee.

5.8 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.

5.9 Right of Association to Enter Units. The Association acting through the Management Committee or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or into any Unit to abate any infractions, to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Unit Owner, such assessment to be secured by the lien provided in Section 6.1.

5.10 Rules. The Management Committee may adopt and administer reasonable Rules for the regulation and operation of the Condominium Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The 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.

5.11 Remedies Available to the Management Committee. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declarations, Bylaws, or Rules, the Management Committee may: (1) impose fines for violation of the Declaration, Bylaws, or Rules; (2) terminate Unit Owners' rights to receive utility services paid as a common expense; (3) terminate Unit Owners' rights to access and use recreational facilities; (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. All such actions shall be conducted in accordance with any requirements in the Act, if any, and any other applicable law, if any.

5.12 Reserve Fund. The Association shall maintain a reserve fund for maintenance, repair and replacement of the Common Area and Limited Common Area, the amount of which shall be determined in the absolute discretion of the Management Committee. Reserve funds may be collected as part of the monthly Assessments. To the extent the Management Committee deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Unit Owners or credited to future Assessments.

5.13 Availability of Condominium Project Documents. The Association will maintain current copies of this Declaration, the Articles, the Bylaws and the Rules concerning the Condominium Project and the Association's own books, records and financial statements available for inspection, upon request, during normal business hours by any Unit Owner or Lender (or any insurer or guarantor of a Lender).

5.14 Managing Agent. The Management Committee may contract with a professional management agent to assist the Management Committee in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association

budgets and make Assessments. Any powers and duties delegated to any management agent may be revoked by the Management Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice and have a term not to exceed two years, which may be renewed by the Management Committee.

5.15 Hearing before Management Committee. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Management Committee or Association shall take adverse action related to any particular Unit Owner or group of Unit Owners. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS

6.1 Creation of Lien and Personal Obligation for Assessment. Each Unit Owner of any Unit, by acceptance of a deed or other instrument creating in such Unit Owner the interest required to be deemed a Unit Owner, whether or not it shall be so expressed in any such Deed or other instrument, is deemed to covenant and agree with each other Unit Owner and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which, each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Unit Owner at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of a Unit Owner unless expressly assumed by such successor with a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case (a) the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Unit Owner from paying further Assessments; and (b) the prorated share of any extinguished Association lien may be redistributed to the other Units in the Condominium Project.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Unit Owners; the management, maintenance, care, preservation and protection of the Condominium Project; enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

6.3 Regular Assessment. The Management Committee is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Management Committee shall adopt a pro forma operating statement or budget for the

upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Management Committee may, but is not required to, send a written summary of the budget to all Unit Owners within thirty (30) days after the adoption of the proposed budget. The Management Committee shall at that time determine the amount of the regular Assessments to be paid by each Unit Owner. Each Unit Owner shall thereafter pay to the Association the Unit Owner's regular Assessment in equal monthly installments on the first day of each month. 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 shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Unit Owner, and the date or dates when due. The Unit Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Management Committee.

6.4 Capital Improvements. Additions or capital improvements to the Project may be authorized by the Board of Directors alone. Any additions or capital improvements which would materially alter the nature of the Project, including but not limited to a change in general appearance, or a change of building materials, etc., must, regardless of its cost and prior to being constructed, be authorized by Members holding fifty-one percent (51%) of the undivided ownership interests in the Project.

6.5 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments) shall be in an amount based on the percentage interest for each Unit stated in Section 3.6 of this Declaration, as the same may be amended from time to time.

6.6 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of regular and special Assessments, provided that such procedures are not inconsistent with the provisions thereof. The failure of the Association to send a bill to a Unit Owner shall not relieve any Unit Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Unit Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Unit Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.

6.7 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Unit Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge not to exceed one hundred and fifty dollars (\$150.00) may be collected by the Management Committee for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.8 Special Assessments. Special Assessments shall be levied by the Management Committee against a Unit and its Unit Owner to reimburse the Association for:

(a) Costs incurred in bringing a Unit Owner or the Unit Owner's Unit into compliance with

the provisions of the Declaration, the Articles, the Bylaws or the Rules;

(b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit;

(c) Any other charge designated as a special Assessment in this Declaration, the Articles, the Bylaws or the Rules; and

(d) Attorneys' fees, interest, costs, and other charges relating thereto as provided in the Declaration, Bylaws or the Rules.

6.9 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Association, which benefit individual Units, and which can be accepted or not by individual Unit Owners, such Unit Owners, in accepting such materials or services, agree that the costs thereof shall be a special Assessment at the discretion of the Management Committee.

6.10 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 discretion may apply the excess to reserves, credit the excess against future Assessments or pay the excess to the Unit Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, 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.

6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

6.12 Homestead Waiver. Each Unit Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

## ARTICLE 7

### EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment that is not paid within ten (10) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may at its option invoke any or all of the sanctions granted in this Article 7.

7.2 Collection Charge. If any Assessment is delinquent, the Unit Owner shall be obligated to pay interest, a collection charge, or such other penalty as the Management Committee may establish in the Rules of the Association. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.



7.3 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Unit 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 attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Unit Owner and the Unit Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Unit Owner vests in the Association or its successors or assigns the right and power to bring actions at law or lien foreclosures against such Unit Owner or Unit Owners for the collection of delinquent Assessments.

7.4 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial foreclosure or in compliance with applicable provisions relating to the foreclosures of Deeds of Trust or realty Mortgages in the State of Utah. In any foreclosure or sale, the Unit Owner of the affected Unit shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. The Association may, through its duly authorized agents, have and exercise the power of the trustee and the power to bid on the Unit at the foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit.

7.5 Suspension of Votes. The Management Committee may suspend the obligated Unit Owner's right to vote on any matter at regular or special meetings of the Association and the Unit Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Unit Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent. Prior to suspending the Unit Owner's right to vote and if the Management Committee has established a hearing process, the Management Committee shall afford the Unit Owner the right to a hearing before the Management Committee as provided in Section 5.15 of this Declaration.

## ARTICLE 8

### PROPERTY RIGHTS IN COMMON AREA

8.1 General Easements to Common Area and Units.

(a) Subject to this Declaration and the Rules, each Unit Owner shall have an equal undivided 1/94<sup>th</sup> interest, right and easement of use and enjoyment in and to the Common Area. Each Unit Owner shall have an unrestricted right of ingress or egress to and from the Unit Owner's Unit over and across such Common Area (exclusive of the Limited Common Area), and the nonexclusive right to the use of all open parking stalls, if any, within the Common Area. Each Unit Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Unit Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Unit Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, contract purchaser, Occupant or other Person who resides in such Unit Owner's Unit.

(b) The Association, acting through the Management Committee or its authorized agent shall have nonexclusive easements with the right of access to each Unit to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such

Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Management Committee or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

8.2 Public Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Unit Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Unit Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facilities. Each Unit 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 Unit Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Unit Owner and those claiming by, through or under a Unit Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy or enjoyment by any Unit Owner or such Unit Owner's Unit.

8.3 Basements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

8.4 Limitation on Easement - Suspension of Unit Owner's Rights. A Unit Owner's equal undivided 1/94<sup>th</sup> interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) The right of the Association to suspend the Unit Owner's voting right in the Association and the Unit Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an assessment on such Unit Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Unit Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- (b) The right of the Association to impose reasonable limitations on the number of guests per Unit Owner or Occupant who at any given time are permitted to use the Common Area; and

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

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

\_\_\_\_\_ Unit No. \_\_\_\_\_ of TERRACES OF ROSE PARK, Phase \_\_\_\_\_, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded \_\_\_\_\_, \_\_\_\_\_ as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the official records of the Salt Lake County Recorder, State of Utah, and as identified and described in the Declaration of Condominium of TERRACES OF ROSE PARK, a Residential Condominium Project, recorded \_\_\_\_\_, \_\_\_\_\_ as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, of the official records of the Salt Lake County Recorder, State of Utah. TOGETHER WITH an undivided 1/94<sup>th</sup> interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided 1/94<sup>th</sup> interest in the Common Area conveyed hereby is subject to modification, from time to time, as provided in the Declaration for expansion of the Condominium Project.

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

8.6 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 Unit Owner and Occupant in such Unit Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Condominium Project.

## ARTICLE 9

### USE RESTRICTIONS

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

9.2 Occupancy by Persons Aged 55 and Over. The Condominium Project is intended to provide housing for older persons. Therefore, residency of the Units is limited to persons who are age 55 or older ("Qualified Residents"), with the ONLY exceptions outlined in Subsection 9.2.2 below.

9.2.1 Compliance with Federal and State Laws. The provisions of this Section 9.2 are intended to comply with the requirements of the Federal Fair Housing Act, as amended, and the Housing for Older Persons Act, as well as the Utah Fair Housing Act, codified at Utah Code Ann. § 57-21-1 (collectively, "the Housing Acts"). To the extent that any provision herein is inconsistent with the provisions of the Housing Acts, the provisions of the Housing Acts shall supersede these provisions as necessary to comply with such Housing Acts and maintain the Association as restricted age housing.

9.2.2 Exceptions. Persons under the age of 55 who fall into one of the following categories are permitted to reside in the Units:

(a) "Disabled Person" meaning a person with a disability under state or federal law who is a child or grandchild of a Qualified Resident and who needs to live with the Qualified Resident because of the disability.

(b) "Health Care Resident" meaning a person hired to provide live-in, long-term, or terminal health care to a Qualified Resident. For the purposes of this Section, the care provided must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

(c) "Resident at the Time of the Transition to 55 and Older Community" meaning a person under the age 55 who was living in a Unit on the date these Declarations came into effect, which shall be the Recording date of this Declaration.

(d) "Spouse" meaning a person under the age 55 who is the husband or wife of a Qualified Resident so long as he or she is living with the Qualified Resident. In the event of divorce, separation, or death of the Qualified Resident, a Spouse may continue to reside in a Unit only so long as 90% or more of the Units are occupied by a Qualified Resident.

9.2.3 Guests. Notwithstanding any other provision of this Section 9.2, a person of less than 55 years of age, who is not a Qualified Resident, may visit and stay in a Unit as the guest of a Qualified Resident for not more than a period of two (2) weeks in any calendar year.

9.2.4 Required Survey Forms. Upon request of the Management Committee, each occupant or prospective occupant of the Units shall promptly complete a survey form with age verification, in such form as required by the Management Committee, attesting to the individual's qualifications to reside in a Unit pursuant to the provisions of this Section 9.2. Furthermore, upon request, each resident shall produce reliable documentation (which may include a birth certificate, passport, immigration card, military identification, driver's license, state identification card, and/or other reliable governmental issued identification containing a birth date) required by the Management Committee to establish that the Association qualifies as housing for older persons under federal and state laws. A new survey shall be completed at least every two (2) years.

9.2.5 Amendments of Age Restriction Provisions to Comply with Changes in the Law. Notwithstanding any other provision of this Declaration, the Management Committee upon unanimous consent shall be entitled to amend this Section 9.2 and such other provisions of the Governing Documents as may be necessary to comply with and conform to such provisions of federal and state laws as will permit the Condominium Project to retain its status as Housing for Older Persons, without the approval of the members.

**9.2.6 NO CHILDREN ALLOWED. NO CHILDREN ARE PERMITTED TO MOVE INTO, RESIDE, OR OTHERWISE OCCUPY ANY UNIT IN THIS ASSOCIATION EXCEPT AS THE VISITING GUEST OF A QUALIFYING RESIDENT FOR A PERIOD OF NOT MORE THAN TWO (2) WEEKS IN ANY CALENDER YEAR.**

9.3 Signs. No signs whatsoever (including, but not limited to commercial, political, sale and similar signs) shall be erected or maintained on the Property whether in a window or otherwise without the approval of the Association, except:

- (a) Such signs as may be required by legal proceedings;
- (b) One house number identification if placed by the Association and in the style selected by the Association;
- (c) Such signs, the nature, number and location of which have been approved by the Management Committee in advance; and
- (d) Street identification and traffic directional signs erected on or adjacent to the Condominium Project by Salt Lake County, or any other municipal entity, which signs shall not require prior approval from the Management Committee.

9.4 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Unit 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. This is a registered Non-Smoking project! No Unit 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.

9.5 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 the same and its proposed use are approved in writing by the Management Committee.

9.6 Parking and Use of Open Parking/Visitor Parking. Unless otherwise permitted by the Association, and except for "customary parking" and "temporary parking," as permitted by this Section 9.6, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall be parked, stored or located within any portion of the Condominium Project, including any Unit, Limited Common Area, or Common Area. "Customary parking" shall mean the parking of operable automobiles, motorcycles, small trucks and vans (each of which must not be used for commercial purposes and each of which must not exceed 3/4 ton in size and seven (7) feet in height measured from ground level and eighteen (18) feet in length) within the parking spaces designated as an exclusive Limited Common Area for each respective Unit. "Temporary parking" shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of the Unit Owners and Occupants including the parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Unit Owners and Occupants as well as parking of vehicles belonging to or being used by Unit Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Rules relating to the admission and temporary parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces is the discretion of the Association, the right to remove or cause to be removed any

vehicles that are improperly parked, restrictions on the time visitor spaces may be used and the assessment of charges to Unit Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments.

9.7 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, window, skylight, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Management Committee, and any replacements thereof, shall be constructed, erected or maintained on the Condominium Project without the prior written approval of the Management Committee.

9.8 Window Covers. Only curtains, drapes, shades, shutters and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Management Committee. No window shall be covered by paint, foil, sheets or similar items. The Management Committee may adopt Rules regulating the type, color and design of the external surface of window covers.

9.9 External Laundering. Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited.

9.10 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Management Committee.

9.11 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.

9.12 Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units; shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Management Committee.

9.13 No birds, animals or pets of any kind shall be kept or harbored in any unit of this project, with the exception of reasonable accommodation for "Service Animals" as defined in the Americans with Disabilities Act. Such exceptions must be obtained by written request and prior approval as outlined in our "Association Policy for Service Animal Approval."

9.14 Leases. The lease of any Unit shall be subject to age restrictions, ownership limitations, and other limitations as specified in Article VI of the Bylaws.

9.15 Landscape Maintenance. The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area, subject to the following. The Association may, in the discretion of the Management Committee, allow or require Unit Owners to maintain the landscaping in Limited Common Areas. The Association may further allow Unit Owners to alter and change landscaping in Limited Common Areas subject to limitations that may be set by the Management Committee by resolution or Rule. The Association shall have the right of access to all

Common Area and Limited Common Area of the Condominium Project as necessary for such landscape maintenance.

9.16 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Management Committee.

9.17 Residential Occupancy. The use of each Unit is restricted to residential occupancy. No industry, business, trade or commercial activities (other than home professional pursuits without employees, signs visible to the outside of the unit, advertising, public visits, and nonresidential storage and mail), or other use of the Unit, shall be conducted, maintained or permitted in any part of a Unit.

9.18 No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided or separated into two or more Units, and no Unit Owner shall sell or lease part of a Unit.

9.19 Architectural Control. No exterior changes whatsoever 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 exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work that in any way alters the exterior appearance of the Property. The Management Committee, or committee established by the Management Committee for that purpose, may designate the design; style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Management Committee, such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the 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 interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

9.20 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Management Committee.

9.21 Variances. The Management Committee may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Management Committee determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on a Unit Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Unit Owners or Occupants of the Condominium 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. The members of the Management Committee and the Management Committee shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Unit Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any member of the Management Committee or the entire Management Committee, unless it is reduced to writing and signed as required in this provision.

9.22 Hazardous Substances.

(a) The Unit Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances (as defined below), on or within the Condominium Project which are not properly controlled, safeguarded and disposed of. The Unit Owners shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to maintenance of a Unit or the Condominium Project.

(b) Each Unit Owner shall indemnify, defend and hold the Association and each and every other Unit Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Unit Owners may incur due to the actions or omissions of an indemnifying Unit Owner. The foregoing indemnity shall apply: (i) whether or not the release of the Hazardous Substances was caused by an indemnifying Unit Owner, a tenant, invitee or otherwise of an indemnifying Unit Owner; and (ii) 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 Unit Owner under this Section 9.22 shall survive any subsequent sale by an indemnifying Unit Owner.

(c) As used in this Section 9.22, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 9.22, "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 10

### INSURANCE

10.1 Property Insurance. The Association shall obtain and maintain the insurance specified in this Declaration; provided, however, the Association shall always comply with the insurance requirements of the Act.

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Condominium Project, including: the Common Area; all buildings including all Units (other than the interior content thereof); fixtures, building service equipment, personal property and supplies that are part of the Common Area or owned by the Association, and that are of a class typically encumbered by First Mortgages held by FNMA or other similar institutional mortgage investors; but excluding land and other items not normally covered by such policies. References herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils that are customarily covered with respect to projects similar to the Condominium Project in construction, location and use, including, without limitation, all perils normally covered by the standard "all risk" endorsement; where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the



Condominium Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage, The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance); 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) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance). The maximum deductible amount for such policy covering the Common Area shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

(b) Flood Insurance. If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Project, 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 Administration 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. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(c) The name of the insured under each policy required to be maintained by the foregoing (a) and (b) shall be the Association for the use and benefit of the individual Unit Owners (the Unit Owners shall be designated by name; if required). Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an insurance trust agreement, or any successor to such Insurance Trustee, for the health and benefit of the individual Unit Owners. Loss payable shall be in favor of the Association (or Insurance Trustee). Each Unit Owner and each Unit Owner's Lender, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Unit Owner and Lender upon request.

(d) Each policy required to be maintained by the foregoing items (a) and (b) shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located.

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

(f) Each policy required to be maintained by the foregoing item (a) shall also contain or provide the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement," if the enforcement of any building, zoning or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (the endorsement must provide for contingent liability from the operation of building laws, demolition costs and increased costs of reconstruction); and (iii) "Steam Boiler and Machinery Coverage Endorsement," if the project has central heating or cooling, which shall provide' that the insurer's minimum liability per

accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the building containing the boiler or machinery. In lieu of obtaining this coverage as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

10.2 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, the agents and employees of the Association, the Unit Owners and Occupants and the respective family members, guests and invitees of the Unit Owners and Occupants, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Condominium Project in construction, location and use. Nevertheless, such coverage shall not be less than One Million Dollars (\$1,000,000.00) 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 a Unit Owner because of the negligent acts of the Association or another Unit Owner or Occupant. Such insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in, lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Management Committee may adjust the amount of the insurance carried under this Section 10.2 from time to time.

10.3 Workers' Compensation Insurance. The Management Committee 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.

10.4 Fidelity Insurance. The Management Committee shall obtain fidelity coverage against dishonest acts on the part of Committee Members, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount no less than one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions.

10.5 Premiums. Premiums upon insurance policies purchased by the Management Committee on behalf of the Association shall be paid by the Association as part of the Common Expenses.

10.6 Policy Provisions.

(a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Unit Owner or Lender.

(b) The named insured under any policy of insurance shall be the Association, as trustee for the Unit Owners, or its authorized representative, including an Insurance Trustee, who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Unit Owner shall be an insured person under the policy with respect to liability arising out of such Unit

Owner's interest in the Common Area or membership in the Association. Each Unit Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Declaration, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance' in trust for the Unit Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of a Unit Owner.

(c) The Association's insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with insurance purchased by the Unit Owners.

(d) Coverage must not be limited by (i) any act or neglect by Unit Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control.

(e) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any Unit Owner to whom a certificate has been issued.

(f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Unit Owners, Occupants and their respective agents and employees, and any defenses based on coinsurance or on invalidity arising from acts of the insured.

10.7 Supplemental Insurance. The Management Committee may obtain such other policies of insurance in the name of the Association as the Management Committee deems appropriate to protect the Association and Unit Owners. The Management Committee shall obtain Committee Member's and officer's liability insurance for officers and Committee Members of the Association in accordance with this Declaration. Notwithstanding any of the provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, the Department of Veterans Affairs and the Government National Mortgage Association, so long as any is a mortgagee or Unit Owner, except to the extent such coverage is not available or has been waived in writing by FNMA, the Department of Veterans Affairs or the Government National Mortgage Association.

10.8 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Management Committee may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Declaration and stating whether, in the opinion of such broker or consultant, the insurance complies with the requirements of this Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Unit Owners and the Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Management Committee shall be fully protected in relying on the written report furnished pursuant to this Section 10.8 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.

10.9 Insurance Obtained by Unit Owners. Notwithstanding the above, Unit Owners shall obtain insurance coverage in addition to the insurance maintained by the Association. All Unit Owners shall have a minimum BUILDING COVERAGE of \$10,000 added to their individual Unit Owner's policy." Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be primary and the insurance of the Association shall be secondary for losses that emanate from within their Unit, or from items that are their responsibility to maintain and replace. If any Unit Owner fails to maintain insurance, Unit Owners will still be responsible for an amount equal to the Association's insurance deductible on any claim arising from the losses that emanates from within their unit or from items that are their responsibility to repair or replace, including improvements, betterments, and special fixtures.

## ARTICLE 11

### DESTRUCTION OF IMPROVEMENTS

11.1 Reconstruction. In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Management Committee shall promptly take the following actions:

- (a) The Management Committee shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
- (b) The Management Committee shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
- (c) Pursuant to Section 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
- (d) If the Management Committee determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Management Committee shall cause notice to be sent to all Unit Owners and to all Lenders' encumbering Units within the Condominium Project setting forth such findings and informing the Unit Owners and Lenders that the Management Committee intends to commence reconstruction pursuant to this Declaration. In the event that Unit Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Management Committee shall call a special meeting of the Unit Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Unit Owners do not object in writing to such reconstruction, the Management Committee shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Management Committee shall levy a uniform special Assessment against each Unit Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- (e) If the Management Committee in good faith determines that none of the bids ' submitted under this Section 11.1 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. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Management Committee shall immediately call a meeting of the affected Unit Owners and all Lenders pursuant to Section 11.2.

(f) If the Management Committee determines that any Unit is uninhabitable by reason of its total or partial destruction, the Management Committee may abate Assessments against the Unit Owner thereof until the Management Committee determines that habitability has been restored.

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

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

11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Management Committee, as trustee for all Unit Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Management Committee. Disbursement of such funds shall be made only upon the signatures of two members of the Management Committee and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Management Committee shall enter into a contract with a licensed

contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Management Committee determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Management Committee shall furnish to the Management Committee before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances, and deemed suitable by the Management Committee. The Management Committee may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.5 Determination not to Reconstruct without Termination. If Unit Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Unit Owner or an allocated Limited Common Area that will not be rebuilt after a casualty) and Eligible Mortgagees on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

11.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Unit Owners and Lenders.

11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Unit Owner of that unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.8 Priority. Nothing contained in this Article shall entitle a Unit Owner to priority over any Lender under a lien encumbering the Unit Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE 12

### EMINENT DOMAIN

12.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Unit Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for the Unit Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

12.2 **Partial Taking of a Unit.** Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Unit Owner for the reduction in the value of the Unit Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking; with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

12.3 **Taking of Limited Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Unit Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

12.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the Unit Owners in proportion to their Allocated Interest in the Common Area before the taking.

12.5 **Taking of Entire Condominium Project.** In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.

12.6 **Priority and Power of Attorney.** Nothing contained in this Article 12 shall entitle a Unit Owner to priority over any Lender under a lien encumbering the Unit Owner's Unit as to any portion of any condemnation award allocated to such Unit, Each Unit Owner hereby appoints the

Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Unit Owners and their Lenders as their interests may appear. This power-of-attorney: is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal' representatives, successors or assignees of a Unit Owner.

## ARTICLE 13

### RIGHTS OF LENDERS

13.1 Notice of Lenders. A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section 13.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.

13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Unit Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

13.3 Relationship with Assessment Liens.

(a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.

(b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

(c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure "sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.



(d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is a Unit Owner.

13.4 Required Lender Approval. Except upon the prior written approval of seventy-five percent (75%) of all Lenders that have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Management Committee shall be entitled by action or inaction to do any of the following:

- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
- (b) Except as specifically provided by this Declaration, amend any provisions governing the following:
  - i. Voting rights;
  - ii. Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
  - iii. Reductions in reserves for maintenance, repair and replacement of the Common Area;
  - iv. Reallocation of interests in the Common Area and the Limited Common Area, or rights to their use;
  - v. Redefinition of any Unit boundaries;
  - vi. Convertibility of Units into Common Area or vice versa;
  - vii. Expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project;
  - viii. Hazard or fidelity insurance requirements;
  - ix. Imposition of any restrictions on the leasing of Units;
  - x. Imposition of any restrictions on a Unit Owner's right to sell or transfer such Unit Owner's Unit;
  - xi. Restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles or the Bylaws; or
  - xii. Any provision that expressly benefits Lenders (including their insurers or guarantors).

Any Lender who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

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

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Rules and other books and records of the Association during normal business hours; and
- (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;

- (b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner of a Unit subject to the lien of a Lender, that remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action by the Unit Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

## ARTICLE 14

### TERMINATION

14.1 **Required Vote.** Except as otherwise provided in Article 11 and Article 12, the Condominium Project may be terminated only by unanimous agreement of Unit Owners of all Units.

14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Unit Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when a Lender (except for the Department of Veterans Affairs, the Department of Housing and Urban Development and FNMA) fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by, certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.

14.3 **Sale of Condominium Project.** A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.4 **Association Duties.** The Association, on behalf of the Unit Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Unit Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Unit Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Unit Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Unit 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 Unit Owner and his or her successors

in interest remain liable for all Assessments and other obligations imposed on Unit Owners by this Declaration.

14.5 Proceeds of Sale. Following termination of the Condominium Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Unit Owners and Lenders as their interests may appear. The interest of any Unit Owner in such proceeds shall not be distributed to such Unit 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.

## ARTICLE 15

### AMENDMENTS

15.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing signed by the Unit Owners who own undivided percentage interests totaling not less than fifty-one percent (51%) of the total ownership interests in Terraces of Rose Park Condominium Project. The amendment shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. If a Unit is owned by more than one Unit Owner, the signature of any one Unit Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.

15.2 Execution of Amendments. An amendment that requires the affirmative written assent or vote of the Unit Owners as provided above shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

15.3 Lender Approval. Any provision of this Declaration that expressly requires the approval of a specified percentage of the Lenders for action to be taken under such provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

## ARTICLE 16

### GENERAL PROVISIONS

16.1 Enforcement. The Association or any Unit Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or

any Unit Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.

16.2 No Waiver. Failure by the Association or by any Unit Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

16.3 Cumulative Remedies. All rights, options and remedies of the Association, the Unit Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Unit Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

16.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.

16.5 Covenants to Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Unit Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Unit Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

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

16.7 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

16.8 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

16.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Unit Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

16.10 Attorneys' Fees. If the association obtains legal counsel to enforce any of the provisions contained in this Declaration, the Bylaws or the Rules, the Association may assess all reasonable fees and costs associated with such counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is initiated or not.

16.11 Notices. Any notice to be given to a Unit Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

(a) Notice to a Unit Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Unit 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 Unit Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Unit Owners, any such notice may be delivered or sent to any one of the co-Unit Owners on behalf of all co-Unit Owners and shall be deemed delivered to all such co-Unit Owners.

(b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Unit Owner or Unit Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section 16.11, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the Manager of the Association (if any) or if there is no Manager, to the statutory agent of the Association. The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental Declaration and such Supplemental Declaration may be filed for this purpose alone upon approval of the Management Committee.

16.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

16.13 **Nonliability of Officials.** To the fullest extent permitted by law, neither the Management Committee nor any officer of the Association shall be liable to any Unit 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 if such Management Committee Member or officer acted in good faith within the scope of such person's duties.

16.14 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Unit Owners required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including the addition or removal of amenities, increase the size of Units, deleting or modifying Common Area or Limited Common Area, or other changes in the layout of the Association. If any such document or action is approved by the consent of at least 80% of the Unit Owners obtained in the manner required to amend this Declaration and so long as the document or action does not materially reduce the size of that Unit Owner's Unit, each and every Unit Owner 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.

16.15 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Unit 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 Unit 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).

16.16 **Notification of Sale and Transfer Fee.** Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Rules, to cover Association documentation and processing. The Management Committee may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Unit Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Unit Owner and shall be secured by the lien in Section 6.1. Notwithstanding the other provisions of this Declaration, this Section 16.16 shall not apply to a Lender who becomes a Unit Owner by a foreclosure proceeding.

16.17 Unit Owner Liability and Indemnification. Each Unit Owner shall be liable to the remaining Unit Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Unit Owner or such Unit Owner's family members, tenants, guests or invitees. Each Unit Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Unit Owner, and to hold such other Unit Owners harmless from, and to defend such Unit Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Unit Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Unit Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Unit Owner or other Person temporarily visiting such Unit.

16.18 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

16.19 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in Unit, each Unit Owner or Occupant of such Unit Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Unit 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 Unit Owner or Occupant to execute such documents and to do such things on such Unit 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 Unit Owner or Occupant.

16.20 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Unit Owner or Occupant agree by purchasing a Unit in this Association that this Association and the Management Committee are not insurers of the safety or well being of Unit Owners or Occupants or of their personal property, and that each Unit Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 10 above.

EACH UNIT OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY

REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH UNIT OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

EXECUTED this day and year first above written.

TERRACES OF ROSE PARK HOMEOWNERS ASSOCIATION

BY: Julie Clements

TITLE: Secretary

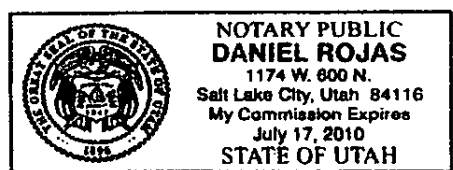
STATE OF UTAH )  
 )SS:  
COUNTY OF SALT LAKE )

On the 24 day of Feb 2009, personally appeared before me Daniel Rojas who by me being duly sworn, did say that he/she is the Secretary of Terraces of Rose Park Owners Association, and that within the foregoing instrument was signed in behalf of said Homeowners Association by authority of the consent of the Members as evidenced by the signatures on Exhibit "D" and said person duly acknowledged to me that said Association executed the same.

[Signature]  
Notary Public

Residing At:

Commission Expires



COPY  
CO. RECORDER



**BYLAWS**  
**Of**  
**TERRACES OF ROSE PARK**  
**OWNERS ASSOCIATION**  
**A Non-Profit Corporation**  
**An Age 55 or Older Housing Community**

As Amended 7 January 2009

## DEFINITIONS OF TERMS

### in Bylaws of Terraces of Rose Park Owners Association

1. Terraces of Rose Park Owners Association, also may be referred to as the Association, or Terraces.
2. Governing Board of Directors, also called the Board of Trustees, the Board, Trustees or Management Committee.
3. Member - An individual who has clear title in fee simple.
4. Owner - Can be an individual, a trust, or a Corporation.
5. Hypothecated - Mortgaged.
6. Fee Simple - In real property = unrestricted rights of disposition.
7. Quorum - Minimum number of members required to be present at an assembly before it validly can proceed to transact business.
8. Nuisance - An activity that causes danger or annoyance to others that interferes with others using or enjoying their own property.

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BYLAWS  
OF  
TERRACES OF ROSE PARK OWNERS ASSOCIATION  
A NON-PROFIT CORPORATION  
AN AGE 55 OR OLDER HOUSING COMMUNITY

AS AMENDED 7 JANUARY 2009

TERRACES OF ROSE PARK CONDOMINIUM PROJECT IS AN AGE 55 OR OLDER CONDOMINIUM COMMUNITY UNDER THE FAIR HOUSING ACT TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 AS AMENDED 42 U.S.C. 3601-3619 AND THE HOUSING OF OLDER PERSONS ACT OF 1995 (RULE L.104-76, 109 STATE 787).

ARTICLE I

OFFICE

Section 1, Principle Office. The principal office of the Association shall be in Salt Lake City, County of Salt Lake, State of Utah. The mailing address is: The Board of Directors, c/o Terraces of Rose Park Owners Association, Post Office Box 16071, Salt Lake City, Utah 84116.

ARTICLE II

MEETINGS OF MEMBERS

Section 1, Annual Meeting. The annual meeting of the members shall be held at 7:00 o'clock p.m. on the first Monday in June of each year at the principal office of this Association, or at such other place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided that the Board of Directors may by resolution fix the date of the annual meeting at such other date as the Board may deem appropriate.

At least ten (10) days (inclusive of the date of meeting) before the date of any annual meeting of the members, the Secretary shall cause a written notice setting forth the time, place and general purpose of the meeting, to be delivered personally or mailed postage prepaid to each member of record at his or her last known address as it then appears on the books of the Association.

Rolls shall be taken and recorded of those attending all meetings, listing the names of the Members attending, their Unit Numbers, and any proxies.

Section 2. Special Meetings. Special meetings of the Members may be called by the President or in his or her absence, the Vice-President or by a majority of the Board of Directors, or by not less than one-third (1/3) of the Members. Notice of such meeting shall be given to each Member in writing at least forty-eight (48) hours before the time fixed for the meeting, and such notice shall advise each Member as to the time, place and general purpose of the meeting, and shall be delivered personally or mailed, postage prepaid, to each Member at his or her last known address as it appears on the books of the Association. Whenever all of the Members shall meet in person or by proxy, such meetings shall be valid for all purposes without additional call or notice, or waiver of call and notice. No call or notice of any meeting of Members shall be necessary if waiver of call and notice be signed by all of the Members.

Section 3. Presiding Officer. The President, or in his or her absence, a Vice-President, shall preside at all such meetings.

Section 4. Voting Requirements. When a quorum is present at any meeting, the vote of the majority of Unit Owners representing more than fifty percent (50%) of the undivided Ownership interest of the Common Areas, present in person or represented by proxy, shall decide any question brought before such meeting unless the question is one upon which, by express provision of the statutes or of the Certificate of Incorporation, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast by the Members either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to a credentials committee consisting of at least three (3) members of the Board of Directors other than the presiding officers, at least ten (10) days prior to said annual meeting. Proxies for Special Members' Meetings must be of record with the credentials committee at least two (2) days prior to the holding of such Special Members' Meetings. The Secretary shall enter a record of such proxies in the minutes of the meeting.

Section 5. Registered Members. At annual meetings of the Members the only persons entitled to vote in person or by proxy shall be those Unit Owners who appear as Members upon the transfer books of the Association on the thirtieth (30<sup>th</sup>) day before such Annual Meeting of Members and are in good standing. The Board of Directors may, by resolution, fix a date in advance of the date of Special Members' Meetings upon which a Member must appear as a Member of record on the Association's transfer books in order to be entitled to vote at such Special Members' Meeting; provided, however, that said date shall in no event be fixed at less than ten (10) nor more than thirty (30) days prior to the date set for such meeting.

An Owner shall be deemed to be in good standing and entitled to vote at any annual meeting or at any special meeting of the Association if, and only if, the Owner shall have fully paid all due installments of assessments made or levied against the Owner and the Owner's Unit by the Association hereinafter provided, together with all interests, costs, attorney's fees, penalties and other

expenses, if any, properly chargeable to the Owner and against the Owner's Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

Section 6. Quorum. At any meeting of the Association, the Owners of more than fifty percent (50%) in the aggregate interest in the undivided Ownership of the Common Areas and facilities shall constitute a quorum for any and all purposes, except where provisions of these Bylaws or the Declaration of Condominium require a vote of more than fifty percent (50%) of the Association, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum, the chairman of the meeting may adjourn the meeting, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 7. Waiver of Irregularities. All inaccuracies and/or irregularities in calls, notices of meeting and in the matter of voting, form of proxies, credentials and method of ascertaining those present, shall be deemed waived if no objection is made at the meeting, after the Presiding Officer at the meeting shall ask, "ARE THERE ANY COMMENTS OR OBJECTIONS?" thereby providing Owners an opportunity to speak.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. Responsibilities. The business and property of the Association shall be managed by the Board of Directors. The Board of Directors may, however, enter into such management agreement or agreements with third persons as it may deem advisable.

Section 2. Election. There shall be a total of nine (9) Directors elected to the Board of Directors each serving a three-year term. The annual election of one-third (1/3) of the Directors shall be by mail prior to the annual meeting, with the results of said voting to be disclosed to the Members at the annual meeting. All ballots cast, to be valid, must be returned to the credentials committee at least five (5) days before the annual meeting. Only Members of the Association may be elected as Directors; provided, however, that officers and/or duly authorized agents of entity Owners may also be elected Directors of the Association.

Section 3. Vacancies. In case of any vacancy in the Board of Directors, the remaining Members of the Board may elect a successor Director or Directors to serve the unexpired term (or terms) of office, usually the nominee next in line is selected according to votes received at the annual meeting.



Section 4. Regular Meetings. A regular annual meeting of the Directors shall be held immediately after the adjournment of each annual Members' meeting at the place at which such Members' meeting was held. Regular meetings, other than the annual meeting, shall be held at regular intervals at such places and at such times as the Board of Directors may by resolution provide.

Section 5. Special Board Meetings. Special meetings of the Board of Directors may be called by the President (or in his or her absence the Vice-President), or by a majority of the Board of Directors, and notice of such meeting shall be given to each Director, orally or in writing, at least twenty-four (24) hours before the time fixed for the meeting, and such notice shall advise each Director as to the time, place and general purpose of the meeting, and shall be delivered personally, or by telephone or telegram, or mailed to each Director postage prepaid to his or her last known address as it appears on the books of the Association.

No notice need be given of regular meetings of the Board of Directors. Whenever all of the Directors meet, such meeting shall be valid for all purposes without call or notice, or waiver of call and notice. No call or notice of any meeting of Directors shall be necessary if waiver of call and notice be signed by all of the Directors.

Section 6. Quorum. A quorum for the transaction of business at any meeting of the Directors shall consist of a majority of the Directors then in office.

Section 7. Committees. The Board of Directors may designate by resolution one or more committees, each committee to consist of three (3) or more of the Members of the Association, which, to the extent provided in said resolution shall have and may exercise the powers in said resolution set forth. Such committee or committees shall have such name(s) as may be determined from time to time by resolution adopted by the Board of Directors. Such committees shall keep regular minutes of their proceedings and report the same to the Board when required. The President may appoint persons to fill vacancies on each of said committees occasioned by death, resignation, removal or inability to act for any extended period of time.

Section 7.1. Advisory Committee. There shall be an Advisory Committee composed of three (3) to five (5) former members of the Board to give counsel and advice, if requested, to the current Board of Directors before making their final decisions.

Section 8. Compensation. Directors, as such, shall not receive any stated salary for their services unless voted upon by the Association.

Section 9. Additional Facilities. The Board of Directors shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the Members.

Section 10. Capital Improvements. Additions or capital improvements to the Project may be authorized by the Board of Directors alone. Any additions or capital improvement which would materially alter the nature of the Project, including but not limited to a change in general appearance, or a change of building materials, etc., must, regardless of its cost and prior to being constructed, be

authorized by Members holding fifty-one percent (51%) of the undivided ownership interests in the Project.

## ARTICLE IV

### OFFICERS

Section 1. Selection of Officers. The Directors shall elect or appoint the officers of the Association. Such election or appointment shall regularly take place at the first meeting of the Directors immediately following the annual meeting of the Members; provided, however, that elections of officers may be held at any other meeting of the Board of Directors.

Section 2. Additional Officers. The Board of Directors may appoint such other officers, in addition to the officers hereinbelow expressly named, as they shall deem necessary, who shall have such authority to perform such duties as may be prescribed from time to time by the Board of Directors or by the President.

Section 3. Removal. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the Members of the Board of Directors, or by the affirmative vote of the Members holding fifty-one percent (51%) of the undivided ownership interests in the Project.

Section 4. President. The President shall be the chief executive of the Association, and shall exercise general supervision over its property and affairs. The President shall sign on behalf of the Association, all loans, mortgages, conveyances, agreements, and contracts and shall do and perform all acts and things, which the Board of Directors may require. The President shall be invited to attend meetings of each committee.

Section 5. Vice-President. In the event of the President's absence or inability to act, the Vice-President shall have the powers of the President. The Vice President shall perform such other duties as the Board of Directors may impose.

Section 6. Secretary. The Secretary shall keep the minutes of the Association and such books and records as these Bylaws or any resolution of the Directors may require. The Secretary shall perform such other services as the Board of Directors may impose. An Assistant Secretary shall be elected who shall, in the event of the Secretary's absence or inability to act, perform the duties and functions of the Secretary.

Section 7. Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors, and shall, when requested by the President, report the state of the finances of the Association at each annual meeting of the Members and at each meeting of the Board of Directors, and include said report with each monthly newsletter. The Treasurer shall perform such other services as the Board of Directors may require and may receive compensation as the Board of Directors may fix or approve.

## ARTICLE V

### MEMBERSHIP

The Members of the Association shall consist of all persons owning a Unit of the Project in fee simple as shown on the records of the County Recorder of Salt Lake County, Utah. No mortgagee, or beneficiary, or trustee under a deed of trust shall be a Member unless and until such a party has acquired title pursuant to foreclosure or any arrangement of proceeding in lieu thereof. The interest of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Member's Unit.

## ARTICLE VI

### TRANSFER OR LEASE OF UNITS

It is recognized that the community of congenial residents of good moral character with the financial resources to insure the proper maintenance and upkeep of Units and payment of common expenses is necessary to protect the value of the Project and the Units. The sale, lease or rental of any Unit shall be subject to the following provisions which each Owner covenants to observe. No unit Owner may sell, lease or rent his or her Unit or any interest therein except by complying with the provisions of this Article, the Bylaws, and Declaration.

Section 1. Ownership Limitations. No Member of the Association, prospective buyer, corporation, or otherwise, shall be permitted to hold ownership of more than two (2) Units in the Project.

Section 2. Age 55 Community. This is an age 55 or older housing community and at least 80% of occupied Units must be occupied by at least one person 55 years of age or older and no person may be a permanent resident who is under twenty-one (21) years of age. The apartment Units are designed for and intended for use as single-family dwelling units, and occupancy, for safety, use of facilities, noise, capacity of apartment unit amenities shall be limited to two adults. No unit shall be owned by or rented to any individual grantee(s) or tenant(s) under the age of 55 years without the written consent of the Board of Directors of the Association. The Association shall verify Ownership, rental and occupancy through reliable surveys and affidavits such as birth certificates, driver's licenses, passports, etc. and shall keep such survey current. The age of Unit occupants should be verified and clearly documented.

Section 3. Rental of Units. The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall mean rental for any period less than twelve (12) months. No more than ten (10) Units in the Project may be rented at any one time which shall be verified by an updated list kept by the Association. Before any Unit Owner may rent the

Owner's Unit, the Owner must obtain the written consent of the Association. The Board of Directors of the Association shall not allow rental of more than ten (10) Units in the Project at any one time.

Section 4. Consent of Unit Owners. The Board of Directors shall not exercise any option to purchase or lease any Unit without the prior approval of a majority of the Unit Owners.

Section 5. Financing by Board of Directors. Acquisition of Units by the Board of Directors, or its designee, on behalf of all Unit Owners, may be made from the working capital and common charges in the hands of the Board of Directors, or if such funds are insufficient, the Board of Directors may levy an assessment against each Unit Owner in proportion to his or her interest in the Project's common areas and facilities, as a common charge, which assessment shall be enforceable in the same manner as provided in Article XII of these Bylaws as amended. Alternatively, the Board of Directors may borrow money to finance the acquisition of such Unit, provided, however, that no financing may be secured by an encumbrance or mortgage of any property other than the Unit so to be acquired by the Board of Directors:

Section 6. Non-Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, the Declaration, these Bylaws, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

Section 7. Occupancy. The Owner or Owners of each Unit in the Project shall notify the Board of Directors in writing of the name, address, telephone number and age of any proposed occupant of the Unit at least fifteen (15) days prior to the proposed date of occupancy. The Board of Directors must within fifteen (15) days from and after the date of receipt of such notice either approve or disapprove the proposed occupant. If approved, the approval shall be stated in a writing executed by the President and Secretary of the Association and shall be delivered to the Unit Owner. If disapproved, the Unit Owner shall be advised of the disapproval in writing and the occupancy shall not be allowed. In the event the Board of Directors on behalf of the Association disapproves a proposed occupant, the Unit Owner or Owners concerned shall have the right to have the disapproval reviewed by the Unit Owners at a special meeting of the Association Members which shall be called at the said Owner or Owners' request, by the President or Vice-President of the Association pursuant to the provisions of these Bylaws. Upon receiving such request, the President or Vice-President shall call a special meeting of the Members and shall give such notice of the meeting as may be required to insure that the same shall be held within ten (10) days after the receipt of such request. Unless Unit Owners representing fifty-one (51%) of the undivided Ownership interest in the Project's common areas and facilities vote at said meeting in favor of reversing the Board of Directors' disapproval, the Board of Directors' decision shall be and remain final.

Section 7.1. Single Family Dwelling. The Apartment Units are designed for and intended for use as Single-Family dwelling units, and occupancy, for safety, use of facilities, noise, capacity of apartment unit amenities shall be limited to two adults. Visitation in any Unit for a period of more than two (2) weeks in each calendar year shall be deemed, and may be treated by the Association as, occupancy for the purposes of this section.

Section 8. Notices. All notices hereunder shall be sent by certified mail to the Board of

Directors c/o Terraces of Rose Park Owners Association, Post Office Box 16071, Salt Lake City, Utah 84116, or to such other address as the Board of Directors may hereafter designate from time to time.

ARTICLE VII

ANNUAL STATEMENT

The Board of Directors shall present at each annual meeting, and when called for by a vote of the Members at any special meeting of the Members, a full and complete statement of the business and condition of the Association.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Association shall be a calendar year.

ARTICLE IX

BUILDING RULES

The Board of Directors shall have the power to adopt and establish, by resolution, such building, management and operational rules as the Board of Directors may deem necessary for the maintenance, operation, management and control of the Project, and the Board may from time to time, by resolution, alter, amend, and repeal such rules. Members, who shall also be the Owners of said Units in the Project, shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Members of the Association and all occupants of the Project.

ARTICLE X

AMENDMENTS

These Bylaws may be altered or repealed by the affirmative vote of a majority of the Board of Directors at any regular meeting of the Board or at any special meeting of the Board if notice of the proposed alteration or repeal be contained in the notice of such special meeting.

## ARTICLE XI

### OPERATION AND MAINTENANCE OF CONDOMINIUM PROJECT

The Association, as agent for its Members, shall be in charge of and responsible for the maintenance, control, operation and management of the Project, in accordance with the provisions of the Utah Condominium Ownership Act, the Declaration whereby the Project is established and submitted to the provisions of said Act, the Association's Articles of Incorporation, these Bylaws, such building, management and operational rules and regulations as the Association may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Association. The Association shall, in this connection, provide for the proper and reasonable maintenance, control, operation and management of the Project and of the common areas and facilities appurtenant thereto. The Association, unless determined otherwise by a majority of its Members, shall also provide water as the same may be required for the proper and necessary use and occupancy of a Unit and such general repair, maintenance and janitorial services as may be reasonably required for the proper and necessary care, maintenance and repair of said common areas. In addition, the Association will be responsible for the proper and reasonable care and maintenance of all patios and balconies contained within the Project, including all fences, railings and outside walls surrounding the same, [balcony floors are the responsibility of the Owner] although said patios and balconies are not part of the Project's Common Areas and Facilities. Each Owner or occupant of a Unit shall provide and pay for all utilities, other than water, used in the Unit of which he or she is the Owner or occupant. No Owner or occupant shall permit or suffer the water to be left running for any unreasonable or unnecessary length of time in the Unit of which he or she is the Owner or occupant. The Association shall have no obligation or responsibility with respect to the care and maintenance of the individual Units, except for the care and maintenance of the patios and balconies as above provided. The Association shall publish and adhere to the policies and procedures set forth in these Bylaws and rules promulgated thereunder.

## ARTICLE XII

### PAYMENT OF EXPENSES AND DISTRIBUTION OF INCOME

Section 1. General Operating Reserve Fund. The Association shall establish a general operating reserve fund for use in connection with the management and operation of the Project. The amount of such fund may be increased or decreased by the Board of Directors, from time to time, as the Board may deem advisable. The Board of Directors shall be required to maintain and perpetuate reserves in amount not less than \$15,000, or such greater amount as the Board of Directors, shall deem prudent against emergencies, acts of God and replacement of roofs, so as to equitably spread such risks or expenses fairly over a reasonable period, and when such reserves are depleted as a result of such occurrences, a reasonable portion of monthly assessments shall thereafter be applied to replenish such reserves.

Section 2. Payment of Expenses. All costs and expenses incurred by the Association, as agent for its Members, in connection with the maintenance, control, operation and management of the Project shall be paid and discharged by the Association, or its duly authorized agent, from the general operating reserve fund, as the same shall become due and payable. Each Member of the Association shall in turn pay the Association for his or her share of said costs and expenses on the basis of such Owners a proportionate interest in the Project's common areas and facilities. Such payments by Members of the Association shall be paid monthly and shall be payable on such days and in such amounts as the Board of Directors shall determine; provided, however, that the total amount of all payments required to be paid by any Member to the Association during any given year shall not exceed such Owner's proportionate part of the total costs and expenses for which the Association is reimbursed by its Members during such year.

### ARTICLE XIII

#### TAXES AND INSURANCE

Section 1. Taxes. It is acknowledged that under the Utah Condominium Ownership Act each Unit and its percentage of undivided interest in the common areas and facilities of the Project, are subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, and that as a result thereof no taxes will be assessed or payable against the Project as such. Each Member will, therefore, pay and discharge any and all taxes, which may be assessed against their percentage of undivided interest in the common areas and facilities of any such unit, and/ or against any items of personal property located in or upon any unit of which he or she is the Owner.

Section 2. Insurance. The Association shall secure and maintain Fire and Extended Insurance Coverage and Public Liability Insurance Coverage on the Project.

Section 2.1. Fire and Extended Coverage. The Association shall secure and at all times maintain, in its own name, a policy of Fire and Extended Coverage Insurance on the Project in the sum of not less than \$1,260,000.00 initially, and in such greater or lesser sum thereafter as the Board of Directors may from time to time determine to be necessary, proper and adequate. As among Members of the Association, participation in any proceeds realized by the Association from said insurance policy will be on the basis of any damage sustained. In the event such Members cannot agree on the amount of damage sustained by each, the decision of the Board of Directors respecting the appraisal of such damage shall be conclusive. Each Member shall be responsible for securing and maintaining insurance coverage on any item of personal property, which he or she may have in or on his or her particular Unit.

Section 2.2. Public Liability Coverage. The Association shall secure and at all times maintain, in its own name, a policy of Comprehensive General Liability Insurance for bodily injury and property damage in the amount of \$500,000.00. Said minimum coverage limit may be increased or

decreased by the Board of Directors from time to time as it may deem to be in the interest of its Members.

It is intended that the insurance policies herein provided for include coverage for any act or omission of the Association, its officers, Members, agents and employees, or of the occupants of any Office Unit in the Project, respecting the ordinary and anticipated use, occupancy, operation and/or maintenance of the Project. It is not intended, however, that the insurance policies include any coverage or recognize any liability with respect to any act or omission on the part of any Member or occupant, or their employees, respecting acts or omissions other than those arising out of the ordinary and anticipated use, occupancy, operation and/or maintenance of the Project or of any of said Units.

#### ARTICLE XIV

##### RIGHT OF ENTRY

Section 1. By the Association. The Association and its duly authorized agents shall have the right to enter any and all of the said Units in case of an emergency originating in or threatening such unit or any other part of the Project, whether the Owner or occupant thereof is present at the time or not. The Association and its duly authorized agents shall also have the right to enter any and all of the Units at all reasonable times as required for the purpose of making necessary repairs upon the common areas and facilities of the Project.

Section 2. By Members. All Members and their duly authorized agents and representatives shall have the right to enter any Unit contained within the Project for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to any other Unit in the Project; and provided further that the Member affected by such entry shall first be notified thereof, if available and if time permits.

#### ARTICLE XV

##### REIMBURSEMENT FOR DAMAGES

Each Member shall promptly perform, or cause to be performed, all maintenance and repair work within any Unit owned by him or her which, if omitted, will adversely affect the building in which said unit is located in its entirety, or any other part of the Project, and shall be liable in damages for any failure on his or her part so to do. Each Member shall also reimburse the Association for the full value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such Member or such Member's tenants.



ARTICLE XVI

NUISANCES

No Member or occupant shall cause, permit or suffer any nuisance to be created or carried on in any Unit of which he or she is the Owner or occupant.

ARTICLE XVII

PARKING FACILITIES

The Project has covered parking facilities as shown by the Record of Survey Map of the Project. Said parking facilities shall be and remain a part of the Project's common areas and facilities, but the Owner of each of said Units shall have the right to the exclusive use of a particular parking space therein to be assigned by the Board of Directors. No automobile shall be parked in the Project outside of the designated parking areas without permission from the designated Owner and shall not occupy space intended for entry or exit to the buildings of this Project.

No motorized vehicle of any kind shall be parked outside of designated parking areas.

ARTICLE XVIII

USE AND OCCUPANCY

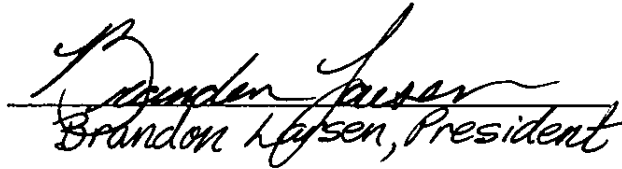
Section 1. Obstruction of Common Areas and Facilities. No Member shall cause, allow, nor permit any person over whom he or she has or may exercise supervision or control to cause or allow, any foyer, stairway, hallway, exit, entrance, breeze way, fire escape, roadway, driveway or sidewalk in or on the Project to be obstructed or to be used for any purpose other than for ingress to or egress from a Unit or the Project.

Section 2. Use of Units. No Owner or occupant of any Unit shall, without the prior written consent of the Association, occupy or use a Unit, nor permit any person over whom such Owner or occupant has or may exercise supervision and control to occupy or use the same, for any purpose other than a private dwelling; or to permit or suffer anything to be done or kept in or upon any Unit which would constitute a nuisance or a violation of any law, ordinance, or regulation, which would increase the rate of fire insurance on the Project or which might otherwise interfere with the rights of other Owners or occupants of the Project. No sign, signal, advertisement or illumination shall be inscribed or exposed on or at any window or outside wall of the Project, nor on the premises of said Project.

CERTIFICATE OF SECRETARY

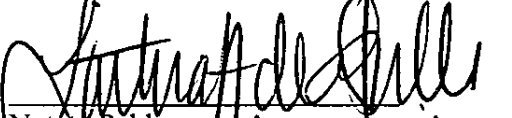
I, the undersigned, do hereby certify:

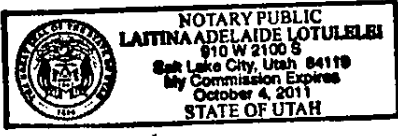
1. That I am the duly elected, and acting Secretary of Terraces of Rose Park Owners Association, a Utah Nonprofit Corporation, an age 55 or older housing community, and
2. That the foregoing Bylaws, comprising twenty-one (21) pages, constitute the original Bylaws of said corporation as duly adopted at the Organizational Meeting of the Board of Directors thereof, duly held on 7 January 2009.

  
Brandon Larsen, President

STATE OF UTAH                    )  
  )    SS:  
COUNTY OF SALT LAKE    )

On the 1<sup>st</sup> day of October <sup>2010</sup>~~2008~~, personally appeared before me Brandon Larsen, who being duly sworn, did say that he/she is the President of Terraces of Rose Park Owners Association, and that within the foregoing instrument was signed in behalf of said Homeowners Association by authority of the consent of the Association Members.

  
Notary Public  
Residing At: Salt Lake City  
Commission Expires Oct 4, 2011



This Amendment to Bylaws of Terraces of Rose Park Owners Association affects that certain property located in Salt Lake County and described in the Declaration of the Terraces of Rose Park Condominium Project as follows:

ALL of Lots 3 and 40, Block 13, OAKLEY, together with the West 8.13 feet of the vacated alley adjoining said property on the East; all of Lots 1, 8, 9, Block 1, ROSE PARK PLAT "B", and part of Lot 10, Block 1, ROSE PARK PLAT "B", all of which is more particularly described as follows:

Beginning at a point which is North 00°00'55" West 80.11 feet from the Southwest corner of Lot 10, Block 1, ROSE PARK PLAT "B", and running thence North 00°00'55" West 502.54 feet, to the Southwest corner of Lot 7, Block 1, ROSE PARK PLAT "B", thence North 89°58'05" East 316.25 feet thence South 00°00'55" East 482.76 feet; thence North 89°59'46" West 125.0 feet; thence South 00°00'55" East 19.89 feet; thence North 89°59'47" West 191.25 feet, to the point of beginning.