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Rhonda Francis Summit County Recorder

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By MILLER HARRISON LLC

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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
CARRIAGE HOUSE CONDOMINIUMS**

A Utah Condominium Project

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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
CARRIAGE HOUSE CONDOMINIUMS**

A Utah Condominium Project

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR CARRIAGE HOUSE CONDOMINIUMS ("Declaration") is effective when recorded with the Summit County Recorder's Office by Carriage House Condominiums Owners' Association, Inc. a Utah nonprofit corporation ("Association"), pursuant to the Utah Condominium Ownership Act.

RECITALS

- A. The Carriage House Condominiums plat was recorded on August 10, 1988, in the office of the Summit County Recorder as Entry No. 295097.
- B. The *Condominium Declaration for Carriage House Condominiums* was recorded on August 10, 1988, in the office of the Summit County Recorder as Entry No. 295098, in Book 489, and beginning at Page 15 ("Enabling Declaration").
- C. The *Amendment to Condominium Declaration for Carriage House Condominiums* was recorded on October 24, 1990, in the office of the Summit County Recorder, as Entry No. 00331907, in Book 584 and beginning at Page 161.
- D. The *Amendment to Bylaws of Carriage House Condominiums Owners Association, Inc.* was recorded on November 30, 1995, in the office of the Summit County Recorder, as Entry No. 00443419, in Book 927 and beginning at Page 798.
- E. A document amending Section 3.1 of the Carriage House Condominiums Owners' Association Inc.'s Bylaws was recorded on March 11, 2008, in the office of the Summit County Recorder, as Entry No. 00650680, in Book 1517 and beginning at Page 805.
- F. The *Rules and Regulations of Carriage House Condominiums* were recorded on May 8, 2006, in the office of the Summit County Recorder, as Entry No. 00776991, in Book 1789 and beginning at Page 747.
- G. The *Bylaw Amendment Election Process* was recorded on December 4, 2017, in the office of the Summit County Recorder, as Entry No. 01082585, in Book 2440 and beginning at Page 1226.
- H. The *Second Amendment to the Bylaws of Carriage House Condominiums* was recorded on February 8, 2018, in the office of the Summit County Recorder, as Entry No. 01086265, in Book 2449 and beginning at Page 0677.
- I. The *Notice of Reinvestment Fee Covenant for Carriage House Condominiums* was recorded on April 16, 2018, in the office of the Summit County Recorder, as Entry No. 01089739, in Book 2457 and beginning at Page 1856.
- J. This *Amended and Restated Declaration of Condominium for Carriage House Condominiums* is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project, (2) conform to changes to the Utah Condominium Ownership Act and other Utah law, (3) provide for a general plan for managing the

Project, and (4) in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project.

K. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration and all prior declarations, rules, bylaws, and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.

L. This Declaration affects the real property situated in Summit County, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.

M. The Bylaws of the Association attached hereto as Exhibit C supersede and replace any previous bylaws of the Association and any amendments thereto.

N. Pursuant to the amendment requirements contained in Articles XX and XXVII of the Enabling Declaration, the undersigned hereby certifies that this Declaration and accompanying Bylaws were approved by Mortgagees entitled to vote, and Owners holding at least two-thirds (2/3) of the undivided interest in the Common Areas.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Association hereby amends and replaces the Enabling Declaration for the Project and states and declares as follows:

ARTICLE 1 DEFINITIONS

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

1.1 **"Act"** shall mean the Utah Condominium Ownership Act, beginning at § 57-8-1, Utah Code Annotated, as the same may be amended from time to time.

1.2 **"Allocated Interest"** shall mean and refer to the undivided ownership interest of each Unit in the Common Areas, the Common Expense liability, and the votes in the Association allocated to each Unit. Each Unit's Allocated Interest is set forth on Exhibit B, which exhibit is attached hereto and incorporated in this Declaration by reference.

1.3 **"Articles"** shall mean the Articles of Incorporation for the Association, as may be amended and restated from time to time.

1.4 **"Assessments"** shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.5 **"Association"** shall refer to Carriage House Condominiums Owners' Association, Inc., the membership of which shall include each Owner of a Unit in the Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Management Committee and may utilize such name that the Management Committee shall select in any such

reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.

1.6 "**Bylaws**" shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The Bylaws are attached as Exhibit C. No amendment to the Bylaws shall be effective until it is recorded.

1.7 "**Common Area**" shall mean, refer to, and include:

- (a) the land included within the Project;
- (b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces, windows and window frames, doors and door frames, gutters, downspouts, soffit, and fascia of the buildings within the Project;
- (c) all halls, corridors, stairs, and stairways, entrances and exits which are designed for the use of more than one Unit;
- (d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, pool, hot tub, laundry room, and other installations or facilities existing for common use as set forth on the Plat;
- (e) all installations of utility services within the Project such as power, light, gas, water, and sewer including all pipes, wires (including cable/internet), conduits or other utility lines that serve more than one Unit, including such facilities that may be located within buildings or Units;
- (f) all mechanical, plumbing, or other equipment, apparatus, and installations existing for common use;
- (g) everything included within the Project, excluding the individual Units, as identified on the Plat; all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.8 "**Common Expenses**" shall mean: (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as Common Expenses by the Association; (e) expenses declared Common Expenses by the Declaration; (f) assessments levied upon the Project or against the Association by the Prospector Square Property Owners Association; and (g) other miscellaneous charges incurred by the Association or the Management Committee pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.9 "**Declaration**" shall mean and refer to this Declaration and shall include any and all amendments and supplements thereto.

1.10 "**Governing Documents**" shall mean collectively, the Declaration, Articles, Bylaws, Plat, and Rules adopted by the Management Committee.

1.11 "**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.

1.12 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit, and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area.

1.13 **“Management Committee Member”** shall mean a duly qualified and elected or appointed member of the Management Committee of the Association.

1.14 **“Management Committee”** shall mean the governing body of the Association elected pursuant to the Bylaws with the rights and powers granted to it by this Declaration and the Act.

1.15 **“Manager”** shall mean a person, persons, or entity, if any, selected by the Management Committee to manage the affairs of the Project.

1.16 **“Mortgagee”** shall mean any Person or entity named as a mortgagee or beneficiary under a mortgage or deed of trust on a Unit.

1.17 **“Occupant”** shall mean any Person, other than an Owner, living, dwelling, visiting, or staying in a Unit. This includes, but is not limited to an Owner’s lessees, tenants, family members, guests, agents, invitees, and representatives.

1.18 **“Officers”** shall mean the officers of the Association as appointed by the Management Committee which shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed from time to time. Officers must be Management Committee Members.

1.19 **“Owner” or “Unit Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Summit County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Management Committee in writing of such alternative arrangement.

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

1.21 **“Plat”** shall mean all of the Carriage House Condominium Plats recorded with the Summit County Recorder. “Plat” shall also refer to any additional or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.22 **“Project”** shall include the real property legally described in Exhibit A, together with all the buildings, improvements and permanent fixtures located thereon, and all easements

and rights appurtenant thereto and shall at any point in time mean the entire Carriage House Condominiums development.

1.23 “**Restrictions**” shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.24 “**Rules**” shall mean the rules, resolutions, and/or regulations adopted by the Management Committee.

1.25 “**Supplemental Declaration**” shall mean a written instrument recorded in the records of the Summit County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.26 “**Unit**” shall mean and refer to a separate physical part of the Project intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. A Unit includes all decorated interiors, wallboard and drywall, surfaces of interior structural walls, floors, and ceilings, interior doors and door frames, and trim, including but not limited to, wallpaper, paint, flooring, carpeting, and tile. Mechanical equipment, ducts, pipes, and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. 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.

ARTICLE 2 THE CONDOMINIUM PROJECT

2.1 **Submission.** The Association hereby confirms that the Project described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Association hereby declares that the Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

2.2 **Name and Location.** The Project is known as Carriage House Condominiums. The Project is located in Summit County, Utah. The legal description of the real property included in the Project is set forth in Exhibit A.

2.3 **Interpretation of Declaration and Applicability of the Act.** The Association intends that the Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act.

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

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

3.1 **Description of Improvements.** The improvements contained in the Project include one condominium building containing one hundred twenty-five (125) residential Units. Other improvements include asphalt roadways, open parking spaces, swimming pool, hot tub, laundry room, concrete patios, and outdoor lighting and landscaping. The building has a concrete foundation, is wood framed, has exterior cementitious and steel siding, and a flat roof with steep-sloped shingled areas. The Plat shall supplement the information and descriptions in this section.

3.2 **Description and Legal Status of Units.** The Plat shows each Unit and its location and dimensions from which its area may be determined, those Limited Common Areas which are reserved for each Unit, and the Common Areas to which the Units have access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit along with an appurtenant undivided interest in and to the Common Area.

3.3 **Common Area.** The Common Areas of the Project shall be as identified on the Plat and as defined in Article 1 above.

3.4 **Limited Common Areas.** The Limited Common Area of each Unit shall consist of the areas identified on the Plat as Limited Common Area, if any, that are spatially associated with that Unit. If not otherwise identified on the Plat, the Limited Common Areas of each Unit shall generally include the appurtenant porch and balcony that is outside the boundaries of the Unit. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the provisions in this Declaration and Design Guidelines. If an Owner's Limited Common Area is not depicted on the Plat, or there is a dispute over its boundaries, the Management Committee shall have the authority and discretion to determine Limited Common Area perimeter boundaries and the Management Committee's decision shall be binding.

3.5 **Allocated Interests in the Common Area.**

(a) The Allocated Interests shall be apportioned among the Units as set forth in Exhibit B. Each Unit's Allocated Interest shall be based on a par value system. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Allocated Interests.

(b) The Allocated Interest appurtenant to each of the Units shall be 2/330 for the 45 small units and 3/330 for the 80 large units, as further set forth on Exhibit B.

(c) If any Units are legally added to or withdrawn from the Project, the Allocated Interest shall be recalculated by dividing the par value of each Unit by the total

sum of all par values of all the Units in the project. An amendment describing any such change shall be recorded via Supplemental Declaration by the Association, through the Management Committee. Otherwise, the Allocated Interest shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration.

ARTICLE 4 MAINTENANCE AND UTILITIES

4.1 Maintenance of Units. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit. 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, and undamaged condition, the following:

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

4.2 Modifications to Units.

(a) Owners may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units, but an Owner shall not make any structural alterations or alterations to any part of the Common Area, the Limited Common Area, or any portion of a Unit that may be visible from the exterior of a building 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 color schemes, material requirements, or other standards.

(b) Owners shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, any Common Area, or Limited Common Area. Without prior written permission of the Management Committee, none of the following shall occur in any remodeling or maintenance of a Unit: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or

more of the other Units, (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

4.3 Maintenance of Common Area and Limited Common Area

(a) Except as otherwise provided specifically herein, the Association, through its 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 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) The Association shall repair, maintain, and replace the Limited Common Area. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is kept in a clean, sanitary, and uncluttered condition.

(c) The Management Committee shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area, so long as the Association is maintained in the best interests of the Owners.

(d) If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Management Committee may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

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

4.5 **Utilities.** All charges for utilities metered separately to each Unit shall be the responsibility of the respective Unit Owner, but may be charged as a Common Expense if such utilities are billed under a bulk contract. Any utilities that are not metered individually and that are paid for directly by the Association shall be a Common Expense of the Association and shall be paid through regular assessments.

ARTICLE 5
ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT

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

5.2 **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Management Committee, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

5.3 **General Powers and Obligations.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a condominium association pursuant to the Act;
- (d) The powers, duties, and obligations not reserved specifically to the Owners; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

5.4 **Membership.** Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.5 **Voting.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy, or absentee ballot, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than establishing a quorum.

5.6 Management Committee. The governing body of the Association shall be the Management Committee. The Management Committee shall be composed of three (3) members and shall constitute the Officers of the Association. Except where a matter or vote is specifically reserved to the Owners, the Management Committee shall act in all instances on behalf of the Association. Management Committee Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Management Committee.

5.7 Action by Management Committee and Owners. Unless otherwise provided in this Declaration or the Bylaws, the Management Committee may act on behalf of the Association in all instances unless such action requires approval from the Owners.

5.8 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 of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, to carry out pest and plumbing inspections, and in connection therewith shall have the further right to assess all costs incurred against the Owner as an Individual Assessment. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including but not limited to, the sound or sight of running water in a Unit, the smell or sight of smoke or gas in a Unit, abnormal or excessive noises; and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

5.9 Rules. The Management Committee may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the 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. The Association shall provide notice of all Rules in accordance with the requirements set forth in the Act.

5.10 Remedies Available to the Management Committee. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Management Committee may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's rights to receive utility services paid as a Common Expense; (3) terminate an Owner's rights to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area, as determined by the Management Committee. Reserve funds may be collected as part of the Annual 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 Owners or credited to future Assessments.

5.12 Availability of Governing Documents. The Association shall maintain current copies of the Governing Documents and the Association's own books, records, meeting minutes, and financial statements (as required by law) available for inspection, upon written request by any Owner or Mortgagee (or any insurer or guarantor of a Mortgagee). The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Management Committee Member and at a location convenient to the Management Committee within the Project or at such other location as may be agreed by the Management Committee and the party requesting. The Association may make the Governing Documents and other Association records available via a website, and if so provided, then the Association shall have met its obligations set forth in this Section for providing any such documents posted thereon.

5.13 Managing Agent. The Management Committee may contract with a professional Manager to assist the Management Committee in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Management Committee at any time, with or without cause.

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

5.15 Management Committee Indemnification. Each past and present Management Committee Member shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

5.16 Management Committee Liability. To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act, each past and present Management Committee Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

5.17 Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Management Committee Member, Manager, or Owner; (2) any business or entity in which any Management Committee Member, Manager, or employee, officer, or owner of any management company employed as the Association's Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Management

Committee Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the Manager and relatives of the Manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the Manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

ARTICLE 6 BUDGET AND ASSESSMENTS

6.1 Annual Budget. The Management Committee shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Management Committee may revise the budget from time to time as the Management Committee deems appropriate. If the Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted. The annual budget shall be used to calculate Owner's annual assessment as specified in Section 6.5. The budget and the accompanying notice of annual assessment amounts shall be made available to Owners within thirty (30) days after budget adoption.

6.2 Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

(a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorney fees against the latter for any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

(b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

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

6.4 Capital Improvements. Capital improvements to the Project that cost less than fifteen thousand dollars (\$15,000) and do not materially alter the nature of the Project may be authorized by the Management Committee alone. Any capital improvement that exceeds fifteen thousand dollars, or any capital improvement that would materially alter the nature of the Project, must be authorized by at least a majority of the Allocated Interests of the Association in attendance at a Special Meeting called for such purpose. No Owner approval is required for maintaining, repairing or replacing any part of the Common Area then in existence due to normal wear and tear, damage, defect, etc.

6.5 Annual Assessments. Annual Assessments shall be made on a calendar year basis based on the budget. The Management Committee shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments, on dates established by the Management Committee. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

6.6 Special Assessments. In addition to the Annual Assessments, the Management Committee may levy in any calendar year a Special Assessment up to one-thousand dollars (\$1,000) per Unit, payable over such a period as the Management Committee may determine (but not less than twelve months), for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over one-thousand dollars (\$1,000) in a calendar year may be levied if approved by a majority of the total Allocated Interest of the Association. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

6.7 Individual Assessments. In addition to Annual and Special Assessments authorized above, the Management Committee may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Management Committee in enforcing the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Management Committee, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

6.8 Allocation of Assessments. Except as otherwise provided herein, all Annual and Special Assessments shall be imposed upon each Unit according to its Allocated Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association.

6.9 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the authority to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident of the Unit of the Owner.

6.10 Certificate of Payment. The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Mortgagee or a potential Mortgagee for such Unit, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

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

6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the 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.

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

6.14 Reinvestment Fee. The Management Committee shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established, the Management Committee or its agent is authorized

to record a Notice of this Reinvestment Fee covenant against all Units, consistent with the following terms and conditions:

(a) Upon the occurrence of any sale, transfer, or conveyance of any Unit as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Unit or not (as applicable, a "Transfer"), the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Management Committee in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

(b) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46.

(c) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

ARTICLE 7

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

7.1 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Management Committee may at its option invoke any one or more or all of the sanctions granted in this Article.

7.2 **Collection Charge.** Unless otherwise set by the Management Committee in the Association's Rules, the following shall apply. Interest shall accrue at the rate of eighteen percent (18%) per annum on all delinquent account balances and a thirty dollar (\$30.00) late fee shall be charged on any delinquent payment. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article 6. Late fees may be assessed each month until the delinquent Assessment is paid in full, including all its accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7.3 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

7.4 **Recovery of Rent From Tenant.** If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code § 57-8-53, the Management Committee may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from

any tenant the rent due or becoming due and the payment of such rent to the Management Committee shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

7.5 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Management Committee, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.

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

7.7 Trust Deed Provisions. Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Governing Documents. All notices of default and other communications material to an exercise of the power of sale shall be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

7.8 Suspension of Votes. The Management Committee may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

7.9 Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Management Committee may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.

7.10 Unpaid Assessments and Future Lease Proceeds. If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment is due, the Management Committee may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

7.11 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit as provided for in Utah Code § 57-8-6.3. The Management Committee may set forth the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be fifty dollars (\$50.00).

**ARTICLE 8
PROPERTY RIGHTS IN COMMON AREA**

8.1 General Easements to Common Area and Units.

(a) Subject to this Declaration and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant.

(b) The Association reserves nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The 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 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 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 Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and

to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

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

8.4 Limitation on Easement - Suspension of Owner's Rights. An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and

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

8.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Project relative to any other Unit or structure only within the Project.

ARTICLE 9 USE RESTRICTIONS

9.1 Rules and Regulations. The Association has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and the Bylaws.

9.2 Use. Units shall be occupied and used only as a private single-family residence. Common Areas are to be used in a manner consistent with their community nature and use restriction.

9.3 Signs. Members are prohibited from placing signs in the Common Areas of the Project. Signs are also prohibited in windows of Units, that are visible from outside the Unit, unless an Owner receives approval from the Management Committee to maintain such sign.

The Management Committee may place signs in the Common Area as it deems necessary on behalf of the Association. The Management Committee is authorized to adopt Rules to expand or modify the sign restrictions contained in this Section.

9.4 Nuisance. No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. A nuisance includes but is not limited to the following: excessive noise between 10:00 p.m. and 7:00 a.m.; the use of outdoor speakers or amplifiers; excessive foot or vehicular traffic in, on, or about the Project beyond that expected for a typical personal residence, especially after 10:00 p.m. and before 7:00 a.m.; and any violation of the Governing Documents. The Management Committee may adopt Rules that further describe the activities that are deemed to be nuisances within the Project.

9.5 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Management Committee.

9.6 Parking. Owners, Occupants, and guests may park in the parking lot owned and governed by the Prospector Square Property Owner's Association ("PSPOA") and all such parking shall be subject to the rules and restrictions adopted and enforced by PSPOA. Recreational Vehicles (including boats, trailers, ATVs, motorhomes, etc.) are prohibited from being parked in the Project. Parking may be further limited by Association Rules that do not conflict with PSPOA rules, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the Common Area parking spaces; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.7 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those approved by the Management Committee, and any replacements thereof, shall not be constructed, erected or maintained on the Project without the prior written approval of the Management Committee. The Management Committee may adopt Rules regulating the location, type, color, and design of these external fixtures. Any damage caused by the installation of any external fixture to the Common Areas (including roofs, siding, and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Management Committee.

9.8 Window Covers. No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Management Committee may adopt Rules regulating the type, color, and design of the external surface of window covers. All window coverings shall be installed within (1) week of occupancy of a Unit.

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

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

9.11 **Pets.** No pets, animals, livestock, or poultry of any kind shall be kept in, on, or about the Project. The Management Committee may adopt Rules and restrictions related to animals that may be permitted in the Project due to applicable laws, including the Federal and State Fair Housing laws. The Association may levy fines and/or Individual Assessments to Owners for violations of this Section or for any damages to the Common Areas and landscaping caused by a pet or animal.

9.12 **Leasing of Units.** The leasing of Units is permitted. The Management Committee may adopt Rules to regulate the leasing of Units which may include, but are not limited to: requiring a copy of each lease to be provided to the Management Committee, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Management Committee. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default. In the event that the Owner or Occupant fails to act accordingly, the Management Committee may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

9.13 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Management Committee has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Management Committee's review shall be for the purpose of assuring, in the sole and absolute discretion of the Management Committee, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Project. However, in no event shall the approval of the Management Committee of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

9.14 **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, windows, doors, fences, window air

conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Project. The Management Committee may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee, or any committee established by the Management Committee. Any structural change may be denied by the Management Committee, or the Management Committee may require the Owner to provide an engineering report demonstrating, in the discretion of the Management Committee, that the structural changes will be constructed in a way to prevent any impact on the building or other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

9.15 Lighting. Exterior lighting fixtures shall be allowed only to the extent approved by the Management Committee.

9.16 Outside Speakers. Except as permitted in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.

9.17 Hazardous Substances.

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

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

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

means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

9.18 Sound Transmission. Without the prior written consent of the Management Committee, no Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall or the penetration of any wall, floor or ceiling that increases sound transmissions, resonances or reverberations to any other Unit.

9.19 Residential Occupancy and Commercial Activity Limits. No business use and trade may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (b) the business activity conforms to all zoning requirements for the Project;
- (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project;
- (d) such business is legal within the meaning of all applicable statutes of the State of Utah and all ordinances of municipal authorities; and
- (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Management Committee.
- (f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.

9.20 Solar Energy Systems. Solar energy systems and attendant equipment shall be prohibited from being constructed or installed on any part of the Common Area in the Project. Notwithstanding the forgoing, if the Management Committee elects to allow solar energy systems in the Project, then the Management Committee may adopt Rules and regulations for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the buildings. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. The Management Committee shall assess the costs incurred by the Association related to the installation, operation, and maintenance of an energy conservation system to the requesting Owner(s) or benefitted Owner(s) in the Management Committee's sole discretion. The costs to the Association arising under this Section shall be assessed and collected as an Individual Assessment.

9.21 Smoking. Smoking is prohibited within all Units and all buildings of the Association. Smoking is also prohibited on all exterior Common Areas of the Project within twenty-five feet (25') of any building. Without limiting the generality of the foregoing, this prohibition applies to all private Units and all of the Association's Common Area including paths, gardens, landscaped areas, hallways, parking lot, roofs, balconies, etc. Smoking is defined as and includes the carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars or pipes, hookahs and electronic vaping devices. Each Owner is responsible to ensure that said

Owner, his / her residents, guests, and invitees comply with this restriction. Violations of this smoking restriction may result in a fine pursuant to the Association's Rules and the fine schedule as adopted and amended from time to time by the Board.

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

ARTICLE 10 INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

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

10.2 Property Insurance.

(a) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including the Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

(2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(3) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(4) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(1) The Association's policy provides primary insurance coverage, and:

- (i) the Owner is responsible for the Association's policy deductible; and
- (ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(2) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage for that Unit to the amount of the deductible under the Association's property insurance policy; and

(3) If an Owner does not pay the amount required under this Subsection within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(c) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Management Committee determines that a claim is likely not to exceed the Association's policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to

cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

(d) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(e) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

10.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

10.4. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

10.5. Theft and Embezzlement Insurance. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Management Committee Members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and (d) coverage for acts.

10.6. Worker's 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 and as the Management Committee deems appropriate.

10.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

10.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

10.9. **Right to Negotiate Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

10.10. **Insurance Trustee.** In the discretion of the Management Committee or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Management Committee shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Management Committee (as the case may be) shall require.

10.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

10.12. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

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

**ARTICLE 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 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 Project.

(c) Pursuant to § 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

(d) If the 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 Assessments for all Units will completely cover the estimated cost of reconstruction, then the Management Committee shall cause notice to be sent to all Owners and to all Mortgagees' encumbering Units within the Project setting forth such findings and informing the Owners and Mortgagees that the Management Committee intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests object in writing to such reconstruction as indicated in such notice, the Management Committee shall call a Special Meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the 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 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 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 Owners and all Mortgagees 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 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 Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Management Committee shall levy a uniform Special Assessment against each 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 Project, then the Management Committee shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the 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 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 Owners and Mortgagees. The Insurance Trustee shall be a bank or savings and loan association with an office in Summit 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 (2) Management Committee Members and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the 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

Summit 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 Owners of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt after a casualty) and Eligible Mortgagees on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

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

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

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

ARTICLE 12 EMINENT DOMAIN

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

record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

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

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

12.4 Taking of Common Area. If the portion of the 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 Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.

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

12.6 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Mortgagee under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13 RIGHTS OF FIRST MORTGAGEE

13.1 First Mortgage. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's Assessments or charges which accrue prior to the acquisition of title of such Unit by the Lender. However, such first mortgagee shall be responsible for all Assessments levied while it holds title to the Unit.

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

13.3 Relationship with Assessment Liens. 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. Any Lender of a first mortgage 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 allocation of such Assessments to all Units within the Project.

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

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

ARTICLE 14 TERMINATION

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

14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. 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 Summit County and is effective only on recordation.

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

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

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

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

ARTICLE 15 AMENDMENTS

15.1 General Amendment Requirements. This Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Summit County. In such instrument the Management Committee shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.

ARTICLE 16 GENERAL PROVISIONS

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

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

16.3 Cumulative Remedies. All rights, options and remedies of the Association, the Owners or the Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Mortgagees 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 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.** The Restrictions and other provisions of this Declaration shall run with and bind the Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

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

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

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

16.9 **Attorney Fees.** If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration or other Governing Documents, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is ultimately initiated. Such costs shall be assessed as an Individual Assessment.

16.10 **Notices.** Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or mailed via USPS to the Person who appears as an Owner in the records of the Association at the time notice is sent. Email shall be the primary means for delivering notice, and it is the responsibility of each Owner to provide an accurate email address to the Association for notice purposes. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes.

Unless a Unit Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Management Committee, or the Association's Manager, an email address that the Association may use to affect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited

in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

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

16.12 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. Failure to do so shall make the Plat invalid and void.

16.13 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

16.14 Consent in Lieu of Vote. In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act for voting or consent purposes.

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

covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

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

16.17 Fair Housing Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, Common Area facilities and buildings, or deviations from provisions of the Governing Documents. Any modification or accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Owner or Person.

16.18 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

16.19 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that the Association, is not an insurer of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association as required by this Declaration. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

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

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

DATED as of the 15 day of July, 2019.

Carriage House Condominium Owners' Association, Inc.
A Utah Nonprofit Corporation

By: *Angelique Brown*

Its: COA President

State of Utah)
) ss.
County of Summit)

On the 15 day of July, 2019, personally appeared before me Angelique Brown who by me being duly sworn, did say that she/he is an authorized representative of Carriage House Condominium Owners' Association, Inc., and that the foregoing instrument is signed on behalf of said corporation and executed with all necessary authority.

Notary Public *Hilary Distefano*



**EXHIBIT A
LEGAL DESCRIPTION**

All of **Carriage House Condominiums**, according to the official plat thereof, on file in the office of the Summit County Recorder.

Parcel Numbers: CHC-101 through CHC-131
 CHC-201 through CHC-231
 CHC-301 through CHC-331
 CHC-401 through CHC-432

EXHIBIT B

<u>Unit Number</u>	<u>Par Value</u>	<u>Allocated Interest</u>
101	2	2/330
102	2	2/330
103	3	3/330
104	3	3/330
105	3	3/330
106	3	3/330
107	2	2/330
108	2	2/330
109	2	2/330
110	3	3/330
111	3	3/330
112	3	3/330
113	3	3/330
114	3	3/330
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432	2	2/330

EXHIBIT C

BYLAWS
OF
CARRIAGE HOUSE CONDOMINIUMS
OWNERS ASSOCIATION, INC.

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

RECITALS

A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the project known as Carriage House Condominiums, and to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

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

ARTICLE II
APPLICATION

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

ARTICLE III
OWNERS

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

the next Annual Meeting of the Owners. The Management Committee may from time to time by resolution change the month, date, and time for the Annual Meeting of the Owners.

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

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

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

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

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

3.7 **Quorum.** At any Owner meeting properly noticed as provided herein, the number of Owners present, either in-person, by absentee ballot, or by Proxy shall constitute a quorum.

for the transaction of business.

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

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

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

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

3.12 Minutes of Meetings. The Secretary, or other individual as the Secretary may delegate, shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person, by absentee ballot, and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the

meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be available to requesting Owners within thirty (30) days of the annual meeting.

ARTICLE IV MANAGEMENT COMMITTEE

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

4.2 **Number and Qualifications.** The Association shall be governed and managed by a Management Committee. The number of Management Committee Members shall be as set forth in the Declaration. Management Committee Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Unit in the Project. Only one representative may serve as a Management Committee Member per Unit owned. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Management Committee Member.

4.3 **Election.** The election of Management Committee Members shall be made by the Owners. At such election, the Owners (in person or via absentee ballot) or their proxies may cast a vote equivalent to their Allocated Interest with respect to each vacancy. The persons receiving the largest number of votes shall be elected. The election of Management Committee Members shall be by secret ballot. Cumulative voting is not permitted. Cumulative voting means a system of voting where each Owner is allowed a total number of votes which is the product of their Allocated Interest times the number of open Management Committee positions, and may give all votes to one candidate or varying numbers to several. Since cumulative voting is not permitted, Owners may not aggregate their votes in this manner to one candidate. For instance, when there are three open Management Committee positions, a Unit Owner with a 2/330 Allocated Interest may only place a vote equivalent to such Allocated Interest for three separate candidates and may not place a vote equivalent to a 6/330 Allocated Interest for one candidate.

4.4 **Election Requirements.** To facilitate a fair and free election, assure there are qualified candidates, provide each homeowner the opportunity to vote and participate in the political process, as well as provide adequate opportunity for the candidates to express their views, the Management Committee shall: (i) establish a date at least forty-five (45) days prior to the annual meeting by which candidates for the Management Committee must declare their intention to run and provide a summary of their views and qualifications to the Management Committee; (ii) send the candidate list and summaries of views and qualifications via email to all owners on a date at least thirty (30) days prior to the annual meeting; and (iii) send a proxy form, absentee ballot and instructions for proxy execution (included shall be the text of Section 3.8 Proxies of the Bylaws) to all owners via email on a date at least thirty (30) days prior to the annual meeting.

4.5 **Term of Office.** Management Committee Members shall serve one year terms. Each Committee Member shall hold office until their successor has been elected.

4.6 **Regular Meetings.** The Management Committee shall hold meetings at least quarterly and more often at the discretion of the Management Committee.

4.7 **Special Meetings.** Special meetings of the Management Committee may be called by the President or a majority of Management Committee Members on at least two (2) business days' prior notice to each Management Committee Member.

4.8 **Meeting Notice.** Notice of Management Committee meetings shall be given personally, by email, or by telephone, including text message, at least two (2) business days' in advance of the meeting to Management Committee Members and those Owners who have requested notice of Management Committee meetings. By unanimous consent of the Management Committee, Management Committee meetings may be held without call or notice to the Management Committee Members, but notice shall always be provided to those Owners who have requested notice of Management Committee meetings.

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

4.10 **Owner Attendance.** Any Owner may request notice of Management Committee meetings by requesting such notice from a Management Committee Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Management Committee meetings shall be given notice along with the Management Committee Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Management Committee Members. If Owners attend a Management Committee meeting, the Management Committee may select a specific period of time during the meeting and limit Owner comments to such time period. The Management Committee in its sole discretion may set a reasonable length of time that each Owner may speak.

4.11 **Open Meetings.** Except as provided below in (a) through (f), Management Committee meetings shall be open to Owners. The Management Committee may hold a closed executive session during a meeting of the Management Committee if the purpose of the closed executive session is to:

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

4.12 **Meetings Generally.** The Management Committee may designate any place in Summit County or at the office of the Manager as the place of meeting for any regular or special Management Committee meeting. Management Committee meetings may also be held with Management Committee Members appearing telephonically. If a Management Committee meeting is held by telephone, the Association shall provide the call-in information such that Owners and Management Committee Members may call-in to access the meeting. No Management Committee Members or Owners shall be compensated for charges incurred for telephonic attendance at meetings.

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

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

4.15 **Resignation and Removal.** A Management Committee Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Management Committee Member may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Management Committee Member to fill the remaining term of the removed Management Committee Member. Management Committee Members may also be removed by a majority vote of the other active Management Committee Members upon the occurrence of any of the following: failure to attend three (3) consecutive Management Committee meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Management Committee Members may appoint a replacement to serve the remaining term of the removed Management Committee Member.

4.16 **Vacancies.** If vacancies occur in the Management Committee for any reason (including death, resignation, or disqualification) except removal by the Owners, the Management Committee Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Management Committee Members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee Member by the Owners may be filled by election of the Owners at the meeting at which such Management Committee Member is removed. Any Management Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired

term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Management Committee Members shall continue to serve until their successors are elected.

4.17 **Action Without a Meeting.** Management Committee Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Additionally, the Management Committee may act by any form of written consent (including email or text message) of a majority of the Management Committee Members. Any action so approved shall have the same effect as though taken at a meeting of the Management Committee.

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

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

4.20 **Meeting.** A Management Committee meeting does not include a gathering of Management Committee Members at which the Management Committee does not conduct and vote on Association business.

ARTICLE V OFFICERS

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

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

5.3 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Management Committee or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Management Committee Members at any Board Meeting called for such purpose, with just cause.

5.4 **Vacancies.** If a vacancy occurs in an office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Management Committee at any

regular or special Management Committee meeting.

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

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

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

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

5.9 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses, excluding charges for phone calls, incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

ARTICLE VI COMMITTEES

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

6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such

committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.

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

6.4 Resignation and Removal. A committee member may resign at any time by delivering a written resignation to the Management Committee, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any committee member.

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

ARTICLE VII INDEMNIFICATION

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

upon the advice of counsel.

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

7.3 **Insurance.** The Management Committee, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Management Committee Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Management Committee Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VII.

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

ARTICLE VIII RULES AND REGULATIONS

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

ARTICLE IX AMENDMENTS

9.1 **Amendments.** Amendments to the Bylaws may be adopted by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Summit County. In such instrument, a Management Committee Member shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to

constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any Owner signature shall be required.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

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

10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

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

IN WITNESS WHEREOF, the Association has executed and adopted these Bylaws.

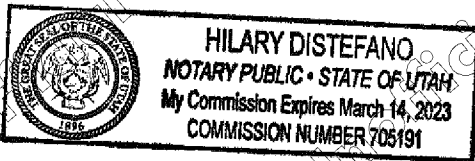
DATED this 15 day of July, 2019.

**CARRIAGE HOUSE CONDOMINIUMS
OWNERS' ASSOCIATION, INC.**
A Utah Nonprofit Corporation

By: *Angelique Brown*
Its: COA President

State of Utah)
) ss.
County of Summit)

On the 15 day of July, 2019, personally appeared before me Angelique Brown who by me being duly sworn, did say that she/he is an authorized representative of Carriage House Condominium Owners' Association, Inc. and that the foregoing instrument is signed on behalf of said corporation and executed with all necessary authority.



Notary Public *Hilary Distefano*