

## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OAK PARK CONDOMINIUMS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Park Condominiums (the "Restated Declaration") is made by the Oak Park Homeowners Association, Inc., a Utah non-profit corporation (the "Association").

### **RECITALS**

A. The DECLARATION OF CONDOMINIUM OF OAK PARK CONDOMINIUM was recorded on April 27, 2001, in the Salt Lake County Recorder's office as Entry No. 7880973 in Book 8450 beginning at Page 2561 (the "Enabling Declaration").

B. A SUPPLEMENT TO THE DECLARATION OF CONDOMINIUM OF OAK PARK CONDOMINIUM was recorded on August 17, 2001, in the Salt Lake County Recorder's office as Entry No. 7977624 in Book 8490 beginning at Page 3338 (the "Supplement").

C. An ANNEXATION AND AMENDMENT TO DECLARATION was recorded on April 25, 2002, in the Salt Lake County Recorder's office as Entry No. 8214956 in Book 8591 beginning at Page 1 (the "First Amendment").

D. This document affects the real property located in Salt Lake County, Utah, described with particularity on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

E. The Owners of Units located within the Property desire to amend the Enabling Declaration, as such has already been amended, to include provisions consistent with amendments to the Condominium Ownership Act, Utah Code Ann. § 57-8-101 *et seq.* (the "Act") that have been enacted since the Enabling Declaration was recorded. These amendments to the Enabling Declaration, as it has been amended, relate to assessments, the Association's remedies for nonpayment of assessments or noncompliance with the Association's governing documents, parking, insurance, reserves, nuisance caused by tobacco smoke, installation of satellite dishes, to make other changes and amendments indicated herein, and to amend and formally adopt the Bylaws of the Association. These amendments are primarily set forth in the following Articles and Sections of this Declaration: Article I at definitions for "assessment," "governing documents," "person," and "rules"; Article V at Sections 5.3, 5.5, 5.6, & 5.8 to 5.18; Article VI at Section 6.2; Article X at Sections 10.2, 10.7, 10.9 & 10.14; Article XIII at Sections 13.9 to 13.11; Article XIV; and Article XV.

F. As evidenced by this instrument, the Association has obtained the necessary approval of the Owners to amend the Enabling Declaration.

## ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. **"Articles"** or **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association, on file with the Utah State Department of Commerce, Division of Corporations and Commercial Code at the time this Declaration is recorded, and as such Articles of Incorporation may be amended in the future.
2. **"Assessment"** shall mean and refer to any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
3. **"Association"** shall mean and refer to Oak Park Homeowners Association, Inc., a Utah nonprofit corporation.
4. **"Board of Trustees"** or **"Board"** shall mean and refer to the governing board of the Association, which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.
5. **"Bylaws"** shall mean and refer to the Amended and Restated Bylaws of the Association, as such may be amended from time to time, attached as Exhibit B to this Declaration.
6. **"Common Areas"** shall mean, refer to, and include:
  - (a) the real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the tract and all landscaping, sidewalks, walkways, parking areas, private drives or roadways located thereon, and exterior building surfaces, including roofs (but excluding all condominium units as herein defined);
  - (b) those common areas and facilities and limited common areas and facilities specifically set forth and designated as such on the map;
  - (c) all other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas and light; and
  - (d) all common areas and facilities and all limited common areas and facilities as defined in the Act, whether or not expressly listed herein or on the map.
7. **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

8. "**Common Expenses**" shall mean and refer to those costs and expenses arising out of or connected with the operation and administration of the Project, including all items and sums lawfully assessed, such as but not necessarily limited to expenses for maintenance, repair and/or replacement of improvements to the Project, and for the Reserve Fund and Working Capital Funds as described in Article V hereof which may be incurred in accordance with the provisions of the Condominium Act, this Declaration and the Bylaws.

9. "**Condominium**" shall mean and refer to the ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

10. "**Condominium Act**" shall mean the Utah Condominium Ownership Act, Utah Code Ann. § 57-8-1 *et seq.* and all amendments thereto.

11. "**Condominium Building**" shall mean and refer to a structure containing Units constituting a portion of the project.

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

13. "**Declaration**" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Oak Park Condominiums, as the same may hereafter be modified, amended and supplemented.

14. "**Declarant**" shall mean and refer to Chytraus Building and Development Corporation and/or any successor thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, expressly comes to stand in the same relation to the Property as did its predecessor. Accordingly, by way of example but not limitation, unless such result is expressly provided, an acquirer of pad sites for construction or development and resale of Units thereon shall not be a successor Declarant.

15. "**Eligible Mortgagee**" shall mean and refer to a First Mortgagee, which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

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

17. "**First Mortgage**" shall mean any Mortgage, which is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.

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

19. **“Governing Documents”** shall mean and refer to the Declaration, the plats (or Master Plan), the Bylaws, the Articles of Incorporation, the Rules adopted by the Association, and any other documents or agreements binding upon all the Owners.

20. **“Limited Common Areas”** shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project. Any parking areas that are identified on the Plat as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant, if any.

21. **“Manager”** shall mean and refer to the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

22. **“Master Plan”** shall mean the plan for development of the entire Project, and of each of the phases thereof, according to the various Plats, plans and all related documents which are on file relating to the official records of and for the Project.

23. **“Member”** shall mean and refer to an Owner as a member of the Association.

24. **“Mortgage”** shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

25. **“Mortgagee”** shall mean a beneficiary of a Mortgage as well as named Mortgagee.

26. **“Option to Expand”** is defined in Article XII.

27. **“Owner”** shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

28. **“Person”** shall mean and refer to a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.

29. **“Plat”** shall mean and refer to the condominium map for Oak Park Condominiums, recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

30. "**Project**" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and Bylaws.

31. "**Property**" shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth on Exhibit A of this Declaration.

32. "**Rules**" shall mean and refer to the Rules and Regulations adopted by the Association.

33. "**Unit**" shall mean and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat. Except where the context specifically otherwise requires, reference to a Unit shall include reference to the Condominium thereon.

34. "**VA**" shall refer to the Department of Veterans Affairs.

## ARTICLE II. BASIC PROVISIONS

2.1 **Property Description.** The property initially associated with the Project which is owned by the Declarant and which shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the first phase for development of and upon the following described real property situated in Salt Lake County, State of Utah:

The first phase :

Beginning at a point on the east line of Block 7, Ten Acre Plat "A", said point being North 0°03'15" West 486.57 feet along the east line of said Block 7 from the Southeast Corner of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1267.09 feet along the center line of 500 East Street and South 89°56'45" West 33.00 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 0°03'15" East 165.86 feet along the east line of said Block 7;  
thence South 89°59'34" West 191.00 feet;  
thence South 0°03'15" East 65.00 feet;  
thence South 89°59'34" West 56.68 feet;  
thence North 130.13 feet;  
thence West 111.55 feet;  
thence North 100.72 feet;  
thence North 89°59'34" East 359.00 feet to the point of beginning .

Contains 1.29 acres, 9 units.

2.2 **Submission.** The Declarant hereby submits the Property (currently made up of the Phase I property described in 2.1) to the provisions of the Condominium Act. The Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set

forth herein. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person acquiring or owning an interest in the Property and improvements comprising the Project, their heirs, executors, successors, assigns, administrators, devisees and representatives.

2.3 **Description of Units.** The final Plat for each of the phases, as approved and recorded, and the associated Master Plan; the associated Plans and Profiles for Phase I, and the Plans and Profiles for each of the other phases, which shall be similar in substance, as they are filed and approved; and the associated Park Plans, including but not limited to the plans for the open spaces, sidewalks, roadways, etc., as they are each recorded with the Salt Lake County Recorder are hereby incorporated into this Declaration by this reference. Among other things, the Master Plan and the documents known as Plans and Profiles for each of the phases shall describe the building types, architectural style and size and plans for the various Units, which shall include one single-family detached Units and Condominium Buildings in which two, three or four attached Units shall be situated, as described therein. Unit D-1 is an existing detached single-family residential structure, the style and size and plan for which is approved hereby. The Property shall accordingly be subdivided into Units and Common Areas subject and according to the said Master Plan and Plats. Consistent and in accordance with the foregoing and with the Plats, the Master Plan and the associated plans, Condominium Buildings shall be constructed together with the other improvements upon the Property in fulfillment of the Project. Each Unit shall be capable of being independently owned, encumbered and conveyed. The actual Units shall be those which are described on the Plats which are made subject to the provisions of the Enabling Declaration and associated with the Project by the Enabling Declaration or any supplementation to the Enabling Declaration.

2.4 **Additional Phases.** It is specifically acknowledged that a second phase and third phase for development of the Project have been preapproved for addition to the Project. The second and third phases for development, tentatively called Oak Park Condominiums, Phases Two and Three are tentatively described as follows according to the Master Plan:

The second phase:

Beginning on interior corner of Oak Park Condominiums Phase I, said point being North 0°03'15" West 386.04 feet along the east line of Block 7 and South 89°56'45" West 247.55 feet from the Southeast Corner of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1367.62 feet along the center line of 500 East Street and South 89°56'45" West 280.55 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 130.13 feet along the west line to the southwest corner of Oak Park Condominiums Phase I;

thence South 89°59'34" West 161.72 feet; thence North 130.15 feet;

thence East 161.72 feet to and along the south line of Oak Park Condominiums Phase I to the point of beginning.

Contains 0.48 acres, 8 units.

The third phase:

Beginning at the Northwest Comer of Oak Park Condominiums Phase I, said point being North 00°03'15" West 486.57 feet along the east line of said Block 7 and South 89°56'45" West 359.00 feet from the Southeast Corner of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1267.09 feet along the center line of 500 East Street and South 89°56'45" West 392.00 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 100.72 feet along the west line to the southwest comer of Oak Park Condominiums Phase I, said point also being on the north line of Oak Park Condominiums Phase 2;

thence West 50.18 feet along said north line to the Northwest Comer of said Oak Park Condominiums Phase 2;

thence South 130.15 feet along the west line to the Southwest Comer of said Oak Park Condominiums Phase 2;

thence South 89°59'34" West 164.66 feet;

thence North 0°02'21" West 230.86 feet;

thence North 89°59'34" East 215.00 feet to the point of beginning.

Contains 0.98 acres, 15 units.

The said additional phases shall be described on additional plats for Oak Park Condominiums and may be added by supplementation of and/or amendment to this Declaration and the Plat.

### ARTICLE III. THE ASSOCIATION

3.1 **Membership.** Every Owner shall be a Member of the Association. Membership shall be mandatory, appurtenant to, and shall not be separated from the Unit to which it pertains. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit. (Notwithstanding the foregoing, a developer of a Unit which has not been completed and approved for occupancy shall not be a Member in respect to such Unit until it is approved for occupancy.) 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 proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be transferred automatically by conveyance of that Unit. Membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The Association shall make available to prospective purchasers current copies of the Declaration, Bylaws, and other rules governing the Project and

the most recent audited financial statement, if one has been prepared. Furthermore, upon written request of any of the federal agencies or corporations (HUD, VA or FNMA) which has an interest or prospective interest in the Project, the Association shall be required to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year. The term "available" as used in this Section 1 shall mean available for inspection, upon prior request, during normal business hours or under other reasonable circumstances.

3.2 **Board of Trustees.** Until such time as the responsibility for electing the Board of Trustees of the Association terminates, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate at the end of the Control Period. Notwithstanding the foregoing, it shall be incumbent upon the Declarant to appoint an Owner of a Unit to the Board of Trustees no later than ninety (90) days after fifty (50%) percent of the Units are lawfully occupied for residential purposes. The "Control Period" shall begin upon incorporation and continue until it is terminated by the Declarant as provided in the Bylaws, but no later than the earlier of (a) one hundred twenty (120) days after seventy five (75%) percent of the Units have been conveyed pursuant to purchase agreements; or (b) the date which is three (3) years after the date upon which the first Unit is conveyed to a purchaser; provided, however, that a conveyance or series of conveyances by Declarant to a developer, or as a part of a reorganization, shall not trigger the end of the Control Period.

3.3 **Votes.** Each Member shall be entitled to one (1) equal vote for his, her or its Unit, provided that the Unit has been awarded a certificate of occupancy. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner modifies a Condominium to increase or decrease the size of his Unit relative to other Units. However, if two or more Units are combined into a single Condominium, the Owner of such Condominium shall be entitled to the number of votes, and shall be assessed, according to the number of Units contained in such Condominium. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves. No Unit shall have more than one vote, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes 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 votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. The Declarant shall have full voting rights with respect to each Unit which it owns.

3.4 **Professional Management.** The Board may carry out through the Manager those of its functions, which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management contract shall provide that it may be terminated by the Association for cause upon thirty (30) days notice. Any such management contract shall run for



a reasonable period from one to three (1-3) years and be renewable for consent of the Association and the management.

#### **ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS AND UNITS**

**4.1 Undivided Ownership Interest in Common Areas; Easement of Enjoyment.** Each Member shall have an equal undivided ownership interest in the Common Areas. Accordingly, such interest shall be stated in the form of a fraction, where the numerator is one (1) and the denominator is the same as the total number of Units. In accordance with the total number of Units indicated on the initial submitted plat, Phase One, the ownership interest shall be one-ninth (1/9) for each Unit's Owner. Each Member shall have an equal right and easement of use and enjoyment in and to the Common Areas, except as limited herein. Each Owner (including Owners of Units constructed on the Additional Land) shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas, and the non-exclusive right to the use of all parking stalls within the Common Areas. Notwithstanding the foregoing, the interest of the Association in Serenity Oak Lane, a private drive to the north of the Project, is Common Area designated primarily for ingress and egress to the detached garage of Unit D-1 (which garage is identified on the plans as "D-2") and for purposes of emergency and appropriate construction and/or maintenance access to the Property, and not for general ingress and egress or parking by Owners (other than the Owner of Unit D-1). Each Owner shall also have the exclusive right to use the Limited Common Area parking stalls which are designated for the Owner's Unit on the Plat. Each Owner shall also have the exclusive right to use and enjoy any other Limited Common Areas 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 be separated therefrom. Any Member may delegate and shall be presumed to have delegated, unless the Manager is notified to the contrary, the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Unit.

**4.2 Easements for Encroachments.** In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Condominium built in substantial accord with the boundaries for such Condominium as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit or Condominium for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Unit or any part of the Common Areas.

**4.3 Limitation on Easement.** A Member's equal undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association, after providing reasonable notice and an opportunity for a hearing given to a Member, to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Areas (i) for any period during which an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such

Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; 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, for the protection of the interests of all Members and for the preservation of the facilities, to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

C. The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service.

4.4 **Party Walls.** Each physical boundary (wall, floor/ceiling, etc.) between Units is a party wall. The rights and duties of the Unit Owners shall be governed by the law regarding party walls.

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

"Unit \_\_\_\_\_ of Condominium Building No. \_\_\_\_\_ of the Oak Park Condominiums, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded in the office of the Salt Lake County Recorder and in the Declaration of Condominium of Oak Park Condominiums, also recorded in the Office of Salt Lake County Recorder, State of Utah, as Entry No. \_\_\_\_\_, TOGETHER WITH an undivided ownership in and to the Common Areas and Facilities as more particularly described in said Declaration of Condominium (as said Declaration may have heretofore been amended or supplemented)."

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

## ARTICLE V. ASSESSMENTS

5.1 **Agreement to Pay Assessments.** By acceptance of a deed or contract of conveyance and transfer of a Unit, an Owner covenants and agrees with all other Owners and the Association to be bound by and to pay in accordance with the Assessments for which provision is made in this Declaration; and further agrees that the Association shall have the power, as described in the Bylaws to establish and collect assessments.

5.2 **Annual Assessments.** Commencing with the year, or remaining portion thereof, during which the first Unit was conveyed, annual assessments shall be computed and assessed by

the Association in equal proportionate amounts against all Units in the Project which are subject to assessment as follows:

A. **Common Expense.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building Exteriors, and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs; real property taxes and special assessments on the Common Areas (and the Units which have been conveyed until those Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Condominium Building Exteriors; right of way maintenance; landscaping; picnic areas; tot lots; sport courts; reasonable wages of Association employees, including fees for a Manager; repairs and replacements of window well sump pumps; utility charges, including charges for utility services to the subject Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Condominium Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2.A shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

B. **Apportionment.** Common Expenses shall be equally apportioned among and assessed to all Units for which a Certificate of Occupancy has been issued and their Owners. The Declarant shall be liable for the amount of any assessments against Units owned by it subject to the provisions of Article V, Section 4.

C. **Annual Budget.** It shall be the duty of the Board to prepare and submit to the Association Members a proposed operating budget for each calendar year. The proposal shall be made in accordance with the estimates of the Board, consistent with Section 5.2A. The budget shall itemize the estimated expenses, anticipated receipts and account for any deficit or surplus from the prior period of operation. The Association, in the manner described in the Bylaws, may adopt an annual budget.

D. **Notice and Payment.** The Board of Trustees shall notify each Owner in writing as to the amount of the annual Assessment against the Owner's Unit on or before December 1 each year for the fiscal year beginning on January 1 of the following year. Except as otherwise provided by the Board, each annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each

calendar month during the fiscal year to which the Assessment relates. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in the Association's Governing Documents. If the Association does not otherwise adopt a policy for late fees and interest through a Board resolution or in the Rules, the following shall apply: (i) for any Assessment not paid by the 10<sup>th</sup> day following the Assessment's due date, the Owner shall be assessed a \$25.00 late fee; and (ii) interest shall accrue on all delinquent Assessments, including unpaid amounts assessed each month pursuant to the Annual Assessment, prior interest (resulting in compounding of interest), late fees, and attorneys' fees will accrue interest at the rate of 1.5% per month, compounded monthly.

E. **Inadequate Funds.** In the event that the Common Expense fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 5.3 below, except that the vote therein specified shall be unnecessary.

5.3 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due. In addition, special Assessments may be assessed by the Association against a particular Unit and its Owner for: (i) costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents; (ii) any other charge designated as pertaining to an individual Unit in the Governing Documents; (iii) fines, late fees, collection charges, and interest; and (iv) attorneys' fees, costs and other professional expenses relating to any of the above.

5.4 **No Assessment Upon Uncompleted Units.** There shall be no assessment upon any Unit which has not been completed and granted a Certificate of Occupancy.

5.5 **Approval of Increase in Annual Assessment.** Any increase of annual Assessment by more than 25% of the prior year's annual Assessment must be approved by a majority of Members entitled to vote either in person or by proxy (exclusive of suspended voting rights) at a meeting called for the purpose of voting on the increase in the annual Assessment.

5.6 **Lien for Assessments.** Pursuant to and as provided for in the Act, the Association shall have a lien against any Unit within the Project for any amounts due and owing to the Association. The Association may record a notice of lien against the Unit and seek to enforce the lien through any remedies afforded to the Association under the Association's Governing Documents and the Act.

5.7 **Personal Obligation of Owner.** The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the

Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

**5.8 Joint and Several Liability of Owner and future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to a person or entity that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. This obligation is separate and distinct from any lien rights associated with the Unit.

**5.9 How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

**5.10 Certificate of Payment.** The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, 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 fifty dollars (\$50.00) or such other amount allowed by law and provided for in the Rules may be collected by the Association for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.

**5.11 Payoff Information Fees.** The Association is specifically authorized to establish a fee up to the maximum amount allowed by law to provide payoff information related to the transfer, refinance, or closing of a Unit.

**5.12 Suspension of Votes.** The Board may suspend an Owner's right to vote on any matter at regular or special meetings of the Association for the entire period during which that Owner remains delinquent on any Assessment or other amount due under any of the provisions of the Governing Documents. Prior to suspending the Owner's right to vote, the Board shall afford the Owner the right to a hearing before the Board as provided in the Governing Documents.

**5.13 Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than 60 days late.

**5.14 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 lien for Assessments. The Association may bring an action for injunctive relief to enjoin an Owner from violating the provisions of the Governing Documents. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in furtherance of collecting any past due amount from an Owner shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association and its assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments. The Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable collection-related charge imposed by a manager, collection agency, or attorney.

**5.15 Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and nonjudicially. Pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-44 to 53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to Quinn A. Sperry, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

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

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

**5.18 Attorneys' fees Incurred As a Result of a Default.** In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments and any lawsuit against the Owner's tenant(s) to collect lease payments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the Owner or others related to collections or violation of the Association's Governing Documents; (6) review an Owner's bankruptcy petition and related filings; (7) monitor any bankruptcy proceedings including but not limited to regular monitoring

of an Owner's progress in a chapter 13 plan for the duration of the plan; (8) file motions seeking relief from the bankruptcy's automatic stay, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (9) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

## **ARTICLE VI. OPERATION AND MAINTENANCE**

6.1 **Maintenance of Condominiums.** Each Condominium and Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Condominium or Unit. The Association shall have no obligation regarding maintenance or care of Condominiums or Units except as set forth in Section 2 of this Article VI or elsewhere in this Declaration

6.2 **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of all Condominium Building exteriors. The Association may choose to maintain any right-of-way or other property interest the Association has or may have in real property located outside of the Property, and any expenses related to such maintenance shall be a Common Expense.

6.3 **Utilities.** The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills, which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

## **ARTICLE VII. DAMAGE OR DESTRUCTION**

7.1 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association

except as otherwise provided in this Declaration.

**7.2 Definition of Repair and Reconstruction.** Repair and reconstruction of the improvements as used herein means restoring the Property and improvements to the Property, which were the subject of the Association's obligation to insure, to substantially the same condition in which it existed prior to the damage or destruction, with each Condominium and the Common Areas having substantially the same vertical and horizontal boundaries as before.

**7.3 Procedure.** In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

A. **Notice to First Mortgagees.** The Association shall give timely written notice to any holder of any First Mortgage on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Condominium subject to such First Mortgage.

B. **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

C. **Sufficient Insurance.** If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damage or destroyed part of the Project, such repair and reconstruction shall be carried out.

D. **Insufficient Insurance. Less than seventy-five Percent Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

E. **Insufficient Insurance. Seventy-Five Percent (75%) or More Destruction.** If proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members vote to carry out such



repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Members to carry out such repair and reconstruction but rather elect to terminate the Project and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

- (i) The Project shall be deemed to be owned in common by the Owners;
- (ii) Each Owner shall own an undivided interest in the Project equal to such Owner's Common Expense allocation percentage as set forth on Exhibit "A";
- (iii) Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
- (iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the project owned by such Owner. The division of funds shall be based on the fair market values of the Units and Condominiums immediately prior to the damage or destruction, and the Owners shall divide said funds based upon the relative value of the Units and Condominiums prior to the damage or destruction.

F. **Priority.** In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

7.4 **Repair or Reconstruction.** If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Condominium and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an

insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

7.5 **Disbursement of Funds for Repair and Reconstruction.** If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 3.D of this Article VII shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

7.6 **Amendment of Article.** This Article VII shall not be amended unless, in addition to compliance with 13.2, below, sixty-seven percent (67%) of the Owners who are entitled to vote thereon in fact vote and agree to such amendment, and such approval and agreement is reflected in an instrument duly executed by the Board of Trustees of the Association and recorded in accordance with the provisions of this Declaration.

## ARTICLE VIII. CONDEMNATION

8.1 **Condemnation.** If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

8.2 **Proceeds.** All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association to be held in trust for Unit Owners and their First Mortgagees as their interests may appear, and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided .

8.3 **Complete Taking.** In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and their First Mortgagees, as their interests may appear. Such distributees shall divide the Condemnation Award based upon the relative values of the Units and Condominiums immediately prior to the condemnation. Such distribution shall be made by check payable joint to the respective Owners and their respective Mortgagees, as appropriate.

8.4 **Partial Taking.** In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

A. **Allocation of Award.** As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken);

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken;

(iii) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(iv) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(v) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vi) No provision of this Article VIII or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

B. **Continuation and Reorganization.** If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section VIII. 4.B; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

C. **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

## ARTICLE IX. TERMINATION

9.1 **Required Vote.** Except as otherwise provided in Article VII and Article VIII, and subject to the approval of the VA, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the votes attributable to all Units.

9.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.

9.3 **Sale of Project.** A termination agreement may provide that the entire

Project shall be sold following termination, subject, however, to the approval of the VA. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

9.4 **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 1 or 2. 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 Condominium. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their 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 their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

9.5 **Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lien holder.

## **ARTICLE X. GENERAL USE RESTRICTIONS**

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

10.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominiums. The use of the Association's interest in the private drive known as Serenity Oak Lane shall be generally limited to access to and from the detached garage which is a part of Unit D-1, and for emergency, maintenance and/or construction purposes (see 4.1). The Board of Trustees may, in its sole discretion, create and enforce a means by which the courts or other recreational facilities in the Common Area may be equitably scheduled for use by the Members. No admission fees, charges for use, lease other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

10.3 **Use of Units and Condominiums.** All Units are improved with Condominiums and are restricted to such use. Each Condominium shall be used only as a

single-family residence, according to then existing zoning and use guidelines. No Unit or Condominium shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Condominium, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

10.4 **Exception for Declarant.** Notwithstanding the restrictions contained in this Article X, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Unit or Condominium owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Condominiums. Such offices and model Condominiums may be located in any Condominiums owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Condominiums, signs, banners or similar devices.

10.5 **Leases.** Any lease agreement between an Owner and a lessee respecting a Unit or Condominium shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing and provide for a minimum initial term of up to one (1) year. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit or Condominium. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

10.6 **Easements.** Easements for installation and maintenance of utilities are reserved as shown on the plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation and maintenance of utilities are also reserved within each Condominium. It is contemplated that telephone, gas, electricity and other utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

10.7 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting

the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

In addition, it shall be a nuisance and prohibited under Section 10.7 to engage in any activity that constitutes a nuisance under Utah Code Ann. § 78B-6-1101, including but not limited to permitting or causing any tobacco smoke to drift or otherwise enter into another Unit or the Limited Common Area of another Unit. Neither an Owner complaining of smoke nor the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project or to any Unit to prevent drifting smoke from entering into that Unit or any patio or balcony associated with that Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or its Limited Common Area, up to and including the cessation of smoking.

**10.8 Temporary and Other Structures.** No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all Condominiums erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

**10.9 Protection of Visual Aesthetics and Parking.** No unsightly articles shall be permitted to remain on any part of the Property so as to be visible from any other Unit or the Common Areas. No outside storage shall be permitted, unless specifically approved by appropriate resolution of the Board of Trustees. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles, and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view. The Board of Trustees may adopt Rules to further protect the visual aesthetics of the Property, including but not limited to adopting Rules that prohibits certain activities within the Property, such as external laundering. Unless otherwise permitted by the Association in the Rules, and except for “customary parking” and “temporary parking,” as permitted by this Section 10.9, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Property, including any Unit or Common Area. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks and vans within allowed spaces in the parking garage. “Temporary parking” shall mean parking of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within

and in the area of the Property including, without limitation, (1) rules allowing or causing to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (3) restrictions on the time period and duration of temporary parking, (4) restrictions to customary or temporary parking on the streets located within the Property, and (5) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners who's guests violate such Rules.

10.10 **No further Subdividing.** No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, the nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit or Condominium to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

10.11 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Condominiums and/or Units and except such signs of customary and reasonable (small) dimensions as may be displayed from within a Unit advertising a Unit or Condominium for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible from the street, but not more than six (6) feet above main floor level. Personal signs or expressions, such as (but not limited to) exterior decorative flags, religious signs and political signs may not be displayed unless permitted by, and in that event only in a manner which is consistent with, a policy adopted by the Board of Trustees.

10.12 **No Hazardous Activities.** No activities shall be conducted on the Property and no improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well- designed interior fireplace.

10.13 **Improvements and Alterations.** There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement with the Property nor removal of any Condominium or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association.

10.14 **External Fixtures.** To the extent permissible by applicable law and the Governing Documents, no external items including but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or



balcony enclosures, sunshades, lighting fixtures, fences, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Board. The Board may adopt provisions in the Rules further regulating any approved, external fixtures.

10.15 **Architectural Control.** The buildings shall be constructed in accordance with the types and architectural style described on the Master Plan. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

10.16 **General Obligations.** Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

## ARTICLE XI. MORTGAGEE PROTECTION

11.1 **Notice of Action.** Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Condominium, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;
- B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;
- C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

11.2 **Matters Requiring Prior Eligible Mortgagee Approval.** Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a

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greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

B. Add or amend any material provision of the Declaration, Articles, Bylaws, or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units and Condominiums;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit or Condominiums;
- (xii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

(xii) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

**11.3 Availability of Project Documents and Financial Statements.** The Association shall be required to make available to Owners, lenders and the holders, insurers, and guarantors of the First Mortgages on any unit, current copies of the Declaration, Articles, Bylaws, and other rules governing the Condominium, and other books, records, and financial statements of the Association. The Association also shall be required to make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the Condominium, and the most recent financial statement, if such is prepared. These documents shall be available for inspection, upon written request, during normal business hours or under other reasonable circumstances.

**11.4 Subordination of Lien.** The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a first Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

**11.5 Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Article XIV, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

**11.6 Priority.** No provisions of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas .

## ARTICLE XII. OPTION TO EXPAND

12.1 **Option to Expand.** Declarant (or its assigns) hereby reserves, pursuant to Section 57-8-13.6 of the Condominium Act, the exclusive option to expand the Project to include any other phases which are approved and shown on a recorded official Plat (the "Option to Expand") without the prior consent of the Owners the Association. The Project shall not be expanded without the written consent and approval of the Declarant. The Option to Expand must be exercised by Declarant (or its assigns) within seven (7) years after recordation of this Declaration.

12.2 **Standards and Conditions.** In the event of an expansion, the additional phase(s) shall be subjected to the provisions of this Declaration. All future improvements to the Project shall be consistent with the initial improvements in terms of quality of construction. No expansion shall affect the statutory validity of the Project nor shall it affect the validity of the title to the Units.

12.3 **Required Consent(s).** If HUD, VA and/or FNMA holds, insures or guarantees any mortgage in one or more of the Units at the time such property is to be added, no additional property shall be added to the Project without the prior written consent of such of them that holds such interest.

12.4 **Insurance.** In the event Declarant chooses to exercise its exclusive option to expand the project, Declarant shall purchase a general liability insurance policy in an amount not less than One Million Dollars for each occurrence to provide insurance coverage against the ordinary and usual insurable risks to which Owners of previously sold units may be exposed to as a result of further condominium development.

12.5 **Improvements; Liens.** All improvements on the property to be added to the Project shall be substantially completed before such property is added to the Project. Provision must be made, prior to expansion, to protect the rights of Owners of existing Units or the priority of First Mortgages on such Units from liens arising in connection with the ownership of or construction of improvements upon the property to be added, and further from any taxes and/or other assessments relating to such property to be added to the Project. In the event that FNMA holds any mortgage in an existing Unit at the time the additional property is to be added to the Project, FNMA shall be furnished with title evidence, in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the property to be added to the Project or which will affect the property and the existing portion of the Project after such addition.

12.6 **Reallocation.** In the event of expansion of the Project involving an increase in the number of Units in the Project, the voting rights of the Members of the Association, and the ownership interests pursuant to Article IV and the obligation for common expense liabilities pursuant to Article V of this Declaration shall each be accordingly reallocated to take into account, from the time of expansion forward, the increased number of Units and their relationship with the other Units in the Project. In the event of expansion in accordance with the foregoing, the Project shall have a specified maximum number of Units

and shall provide that each Owner shall have a minimum percentage of interest in the Common Area, and shall also provide for a specified minimum number of Units which will give each Owner a maximum percentage of interest in the Common Area. Accordingly, for example, the minimum number of Units shall be the number of Units in Phase One, which is nine (9) Units. Upon addition of Phase Two and Phase Three, the total number of Units shall be increase to thirty-two (32). The obligation for common expense liabilities shall be allocated according to a fraction for each unit, where the numerator of such fraction is one, and the denominator of such fraction is the total number of Units. Therefore, when Phases One, Two and Three are combined, the allocation of expenses shall be one-thirty-second (1/32) for each Unit. The foregoing are provided as examples, and not in limitation of the numbers of Units which may be made part of the Project.

### **ARTICLE XIII. MISCELLANEOUS**

13.1 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration or the Bylaws shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing. Notice may also be sent electronically to an Owner as set forth in the Bylaws.

13.2 **Amendment of Declaration.** Except as provided in Article XII elsewhere in this Declaration any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the right (provided, however, that such amendment is first approved by the VA) to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA of the VA or any other federal, state or local governmental agency with jurisdiction over the subject matter which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Upon approval by the VA or by any other federal, state or local government agencies (the approval of which is required by applicable law), any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this

Declaration, and so long as the Declarant is the Owner of any unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit.

**13.3 Amendment to Documents After Department of Veterans Affairs Project Approval.** The Project, and its various documents have been submitted to the Department of Veterans Affairs for approval. While the Declarant is in control of the Association, amendments to the Declaration, the Articles of Incorporation and/or the Bylaws or other enabling documentation must be approved by the V.A.

**13.4 Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

**13.5 Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

**13.6 Covenants to Run With Land.** This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit or Condominium shall comply with, and all interest in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**13.7 Lists of Owners and Eligible Mortgagees.** The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and

rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

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

13.9 **Loans.** Upon approval of Owners holding at least forty percent (40%) of the undivided ownership interests by vote at a meeting called for that purpose, the Association may borrow money, enter into leases, and may provide such security as necessary for the loan or lease, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Unit shall be security for any loan to the Association without that Unit Owner's consent.

13.10 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or any intentional or negligent act of any guest or invitee of the Owner or Occupant of that Owner's Unit, to the extent such losses and damages are not covered by the Association's insurance or amount to less than the Association's policy deductible. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend such Persons 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, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

13.11 **Reinvestment Covenant Upon Sale or Transfer of Unit.** Except as otherwise limited by law, as provided for in Utah Code Ann. § 57-1-46, the Board may establish a reinvestment fee Assessment, from time to time, which shall be no more than one-half of one percent (0.5%) of the value of the Unit and which shall be due and payable immediately after any sale or other transfer of any Unit. The Board shall have authority to set forth in the Rules the date, time of payment, amount, information that is required from any transferee of any Unit upon any sale or transfer, and any other procedures or requirements related to the reinvestment fee Assessment. A separate notice of any reinvestment fee Assessment must be filed with the Salt Lake County Recorder's office before the Association may collect a reinvestment fee.

#### ARTICLE XIV. INSURANCE

14.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in the 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.

14.2 **Annual Insurance Report.** Not later than sixty (60) days prior to the annual meeting of the Association, the Association may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;” and (4) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report may be distributed to the Owners at or before the annual meeting of the Association or shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

14.3 **Property Insurance.**

(a) **Hazard Insurance.**

(1) **Blanket Policy of Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building service equipment.

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

(ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism,



smoke, and theft; and (2) all perils normally covered by “special form” property coverage.

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

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

(v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) “Inflation Guard Endorsement,” if available; (2) “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 (3) “Equipment Breakdown,” if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per incident 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

(2) notwithstanding Subsection 14.3(b)(1) and subject to Subsection 14.3(b)(3):

(i) the Owner is responsible for the Association's policy deductible; and

(ii) building property coverage, often referred to as Coverage A, of the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible.

(3) (i) As used in this Subsection (3):

(A) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.

(B) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.

(C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.

(ii) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.

(iii) If an Owner does not pay the amount required under Subsection (14.3)(b)(3)(ii) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

(c) **Flood Insurance.**

(1) If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property.

(2) If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, at the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(d) **Earthquake Insurance.** The Association may purchase earthquake insurance as the Board deems appropriate. If the Board elects not to purchase earthquake insurance, a vote of at least 25% of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote.

(e) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(f) **Association's Right to Not Tender Claims That Are Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible, and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in section 14.3(b)(3)(iii), recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.

(g) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection 14.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

14.4 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one Person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

14.5 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the 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. At the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

14.6 **Insurance Coverage for Theft and Embezzlement of Association Funds.** 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 months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.

14.7 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.

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

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

14.10 **Association's Right to Negotiate All Claims and Losses and Receive Proceeds.** The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after 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. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

14.11 **Insurance Trustee.** At the discretion of the Board or upon written request executed by Owners holding 50% or more of the Undivided Interests, when there is a loss greater than \$100,000, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Board (as the case may be) shall require related to a loss and receipt or potential

receipt of insurance proceeds.

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

14.13 **Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with an Owner if an Owner resides in the Unit, and the Association's agents and employees.

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

14.15 **Applicable Law.** This Article XIV is specifically subjecting the Association to the insurance requirements and provisions of Utah Code Ann. § 57-8-43, as enacted in 2011, 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 XV. RESERVES

15.1 **Requirement for Reserves.** In addition to the Association's Common Expense Fund, the Association shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount required by the Act or determined by the Owners annually, whichever is greater, pursuant to the following provisions:

- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
- (b) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (c) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.
- (d) **Reserve Analysis.** The Association shall cause a Reserve Analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The Reserve Analysis shall, at a minimum, estimate the need for and appropriate amounts for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common

Areas that have a useful life of three (3) years or more. The Reserve Analysis and updates shall project a minimum of thirty (30) years into the future.

(e) **Qualifications for Person Preparing Reserve Analysis.** The Reserve Analysis report should be prepared by a Person or Persons with (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a Reserve Analysis.

(f) **Disclosure and Approval at Annual Meeting.** Annually, at the special meeting or at the annual meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.

IN WITNESS THEREOF, the undersigned officer or delegate of the Association hereby certifies that the Board of Trustees has obtained the affirmative written vote or consent of the Owners of Units holding at least sixty-seven percent (67%) of the total votes in the Association cast in person or by proxy at a meeting duly called for the purpose of voting on this instrument and consistent with the requirements of Article XIII, Section 13.2 of the Enabling Declaration. The Association further certifies that any approval by Eligible Mortgagees has been obtained.

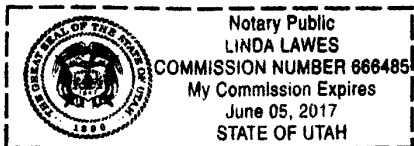
**Oak Park Homeowners Association, Inc.**

DATED this 14 day of Dec, 2013.

[Signature]  
(Signature)  
By: Doug Lawes  
Its [Title]: HOA President

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 17 day of December, 2013, by Doug Lawes, who by me being duly sworn, did say that he/she is the HOA President of the Oak Park Homeowners Association, Inc.



[Signature]  
Notary Public

## **EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY**

### **Phase One:**

Beginning at a point on the east line of Block 7, Ten Acre Plat "A", said point being North 0°03'15" West 486.57 feet along the east line of said Block 7 from the Southeast Corner of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1267.09 feet along the center line of 500 East Street and South 89°56'45" West 33.00 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 0°03'15" East 165.86 feet along the east line of said Block 7;  
thence South 89°59'34" West 191.00 feet;  
thence South 0°03'15" East 65.00 feet;  
thence South 89°59'34" West 56.68 feet;  
thence North 130.13 feet;  
thence West 111.55 feet;  
thence North 100.72 feet;  
thence North 89°59'34" East 359.00 feet to the point of beginning.

Contains 1.29 acres, 9 units.

### **Phase Two:**

Beginning on interior corner of Oak Park Condominiums Phase I, said point being North 0°03'15" West 386.04 feet along the east line of Block 7 and South 89°56'45" West 247.55 feet from the Southeast Corcer of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1367.62 feet along the center line of 500 East Street and South 89°56'45" West 280.55 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 130.13 feet along the west line to the southwest corner of Oak Park Condominiums Phase I;  
thence South 89°59'34" West 161.72 feet;  
thence North 130.15 feet;  
thence East 161.72 feet to and along the south line of Oak Park Condominiums Phase I to the point of beginning.

Contains 0.48 acres, 8 units.

**Phase Three:**

Beginning at the Northwest Corner of Oak Park Condominiums Phase I, said point being North 00°03'15" West 486.57 feet along the east line of said Block 7 and South 89°56'45" West 359.00 feet from the Southeast Corner of Lot 12, Block 7, Ten Acre Plat "A", Big Field Survey, said point of beginning also being South 0°03'15" East 1267.09 feet along the center line of 500 East Street and South 89°56'45" West 392.00 feet from a Salt Lake County Survey Monument in the intersection of 500 East Street and 3900 South Street, and running;

thence South 100.72 feet along the west line to the southwest corner of Oak Park Condominiums Phase I, said point also being on the north line of Oak Park Condominiums Phase 2;

thence West 50.18 feet along said north line to the Northwest Corner of said Oak Park Condominiums Phase 2;

thence South 130.15 feet along the west line to the Southwest Corner of said Oak Park Condominiums Phase 2;

thence South 89°59'34" West 164.66 feet;

thence North 0°02'21" West 230.86 feet;

thence North 89°59'34" East 215.00 feet to the point of beginning.

Contains 0.98 acres, 15 units.



## **EXHIBIT B – BYLAWS**

# AMENDED AND RESTATED BYLAWS OF OAK PARK HOMEOWNERS ASSOCIATION, INC.

## **Article I** **Name, Principal Office, and Definitions**

1.1. Name. The name of the corporation is Oak Park Homeowners Association, Inc. (the "Association"). It is a Utah non-profit corporation.

1.2. Principal Office. The principal office of the Association shall be the address on file with the State of Utah for the Association. The Association may have such other offices, either within or outside the State of Utah, as the Board of Trustees may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Oak Park Condominiums, filed in the office of the Salt Lake County Recorder as it may be amended from time to time (the "Declaration"), unless the context indicates otherwise.

## **Article II** **Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas. The Association shall be the primary entity responsible for enforcement of the Declaration and any applicable rules regulating use of the Property. The Association shall perform its functions in accordance with the Declaration, the Bylaws, the Articles and the laws of the State of Utah. In the event of a conflict among the foregoing, these Bylaws shall be superseded by Utah law, the Declaration and the Articles, which shall each have priority over the other in that order.

2.2. Membership. Every Owner of a Unit for which a Certificate of Occupancy has been issued shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership as one Member applicable to that Unit subject to the restrictions on voting, set forth in the Declaration and/or these Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, trustee, partner, or other

individuals designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. Notice to a Member shall be sufficient if sent to the Owner(s) of record, according to the records of the County Recorder of the record date, to the address of the Owner of record unless the Association has been notified of another address and/or designated recipient. If no address for delivery is available, notice shall be sufficient if posted on a conspicuous place on the Property.

2.3. Classes of Members; Record Date; Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any. Subject and according to the provisions of the Declaration, Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under the Declaration; provided, however, that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under the Declaration. The Class "A" Member entitled to the vote for any particular Unit shall be the record Owner thereof on the Record Date. The "Record Date" shall be the business day which immediately precedes the date upon which notice of the meeting is sent.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" membership shall terminate at the time of expiration of the "Class "B" Control Period" which shall continue until the earlier of: (a) one hundred twenty (120) days after seventy-five percent (75%) of the Units have been conveyed, pursuant to the purchase agreements or (b) the date which is three (3) years after the date upon which the first Unit is conveyed to a purchaser. (In the event of a conveyance or series of conveyances by Declarant to a developer, or as part of reorganization, the end of the Class "B" Control Period shall not be triggered.) Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit (if any) which the Declarant owns.

2.4 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place in Salt Lake County, Utah, which is convenient to the Members, as may be designated by the Board.

2.5 Annual Meetings. Unless changed by the Board, the annual meeting of Owners for the Association shall be held in November of each year. The Board may from time to time change the date and time for the annual meeting of Owners.

2.6 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the total

Class "A" votes in the Association.

2.7 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally, by mail, or by email, to each Member entitled to vote at such meeting, no less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President. In the case of a special meeting, or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. In the case that a special meeting is directed by resolution of the Board or a petition signed by Members representing at least twenty-five (25%) of the total Class "A" Votes in the Association, pursuant to 2.6, and notice shall be given for the date specified, and for the purposes specified by the resolution or petition, and for such other purposes as the president may designate in his or her discretion. No business shall be transacted at a special meeting except as stated in the notice unless all Members (whether or not present) consent thereto. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid. If emailed, the notice of a meeting shall be deemed to be delivered 24 hours following the time that the email was sent to the Owners, so long as the email used to provide the notice is one that the Owner previously provided to the Association, or one that the Owner has previously used to communicate with the Association, the Board, or another agent of the Association.

2.8 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.9 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting, then notice shall be given to members in the manner prescribed in 2.7, above.

2.10 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, trustee, partner, or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Utah law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to

any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable. A proxy shall automatically cease upon conveyance of any Unit for which it was given; or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person; or upon written revocation; or upon the expiration of 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of the Class B Member, cutting the Class "B" Control Period; and thereafter of Members representing 25% of the total Class "A" votes in the Association, shall constitute a quorum at all meetings of the Association.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members, may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

2.14 Order of Business at Meeting. The order of business at each meeting of the Members of the Association shall be as follows:

- A. roll call to determine the voting power represented at the meeting;
- B. proof of notice of meeting or waiver of notice;
- C. reading and approval (or correction and approval) of preceding meeting minutes;
- D. reports of officers;
- E. reports of committees;
- F. election of inspector of election (if applicable) and/or votes;
- G. election of trustees (if applicable);

- H. unfinished business; and
- I. new business.

Meetings of Members shall be conducted by the officers of the Association, in order of their priority.

**Article III**  
**Board of Trustees: Number, Powers, Meetings**

A. Composition and Selection.

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Trustees ("Board"), each of whom shall have one equal vote. Except with respect to trustees appointed by the Class "B" Member, each trustee shall be an Owner of a Unit, or legal representative of an Owner; provided, no more than one (1) Owner representing the same Unit may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, trustee, partner, employee, or trust officer of such Member shall be eligible to serve as a trustee unless otherwise specified by written notice to the Association signed by such Member; provided, that no Member other than the Class "B" Member may have more than one such representative on the Board at a time.

3.2 Number of Trustees. The Board shall consist of at least three (3) and not more than seven (7) trustees, as may be determined by resolution of the Members of the Association. The initial Board shall consist of three trustees as identified in the Articles of Incorporation. The Board of Trustees or the Members of the Association may increase, by resolution, the authorized number of Members of the Board. In the case of conflict between the Board and the Association, the Members of the Association's determination shall supersede.

3.3 Trustees During Class "B" Control Period. During the Class "B" Control Period the trustees shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member. As provided in Section 3.2 of the Declaration, at least one Owner shall be appointed within ninety (90) days of the time that fifty (50%) percent of the Units are lawfully occupied for residential purposes.

3.4 Election Procedures. In each election of trustees by the Class "A" Members, each Owner may cast the entire vote assigned to his Unit for as many candidates as there are positions to be filled. There shall be no cumulative voting. Trustees shall be elected by secret written ballot. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Trustees may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Not later than the first annual meeting after the termination of the Class "B" Control Period, and at each annual meeting thereafter , the

Members of the Association shall elect Trustees to the Board of Trustees. In the event that an annual meeting is not held, or the Board is not elected at that meeting, the Board may be elected at a special meeting of the members held for that purpose. Each trustee shall be elected for a term of one (1) year. The trustees shall hold office until their respective successors have been elected, or until the death, disability, resignation or removal of such trustee.

3.6. Removal of Trustees and Vacancies. Any trustee elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a trustee, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such trustee. In the event of the death, disability, or resignation of a trustee elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term. This Section shall not apply to trustees appointed by the Class "B" Member nor to any trustee serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a trustee appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the trustees shall determine, but at least one (1) such meeting shall be held during each calendar quarter.

3.9. Special Meetings. Special meetings of the Board of Trustees shall be held when called by written notice signed by the President or Vice President or by any two trustees. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

3.10 Notice; Waiver of Notice.

(a) Notice of the time and place of a regular meeting shall be communicated to trustees not less than four calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to trustees not less than 72 hours prior to the meeting. Notice shall be given to each trustee by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) fax transmission to the trustee's home or office, with confirmation of receipt by the receiving fax; (iv) or by

email. All notices by fax shall be given at the trustee's telephone or fax number, or sent to the trustee's address as shown on the records of the Association. All notices by email shall be given at the trustee's email address shown on the records of the Association. Notices sent by first class mail shall be deemed communicated two business days after being deposited into the United States mail. Notices given by personal delivery, fax, or email shall be deemed communicated when delivered, faxed, or emailed.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the trustees not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any trustee who attends the meeting without protesting, before or at its commencement, about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board of Trustees. At all meetings of the Board, a majority of the trustees shall constitute a quorum for the transaction of business, and the votes of a majority of the trustees present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration.

3.13 Compensation. Trustees shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other trustees. Nothing herein shall prohibit the Association from compensating a trustee, or any entity with which a trustee is affiliated, for services or supplies furnished to the Association in a capacity other than as a trustee pursuant to the contract or agreement with the Association, provided that such trustee's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Trustees, excluding the interested trustee.

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Notice to Owners: Open Meetings. Subject to the provisions of Section 3.16,



all meetings of the Board shall be open to all Members, but Members other than trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a trustee. In such case, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16 Action Without a Formal Meeting. Any action to be taken at a meeting of the trustees or any action that may be taken at a meeting of the trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17 Powers. The Board of Trustees shall have all the powers and duties necessary for the administration of the Association's affairs, and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things that are not directed by the Declaration, Articles, these Bylaws, or Utah law to be done and exercised exclusively by the membership generally.

3.18 Duties. Subject to the provisions of the Declaration, the duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) proposing, and, upon approval, levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Areas;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository, which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the trustees' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and

improvements to or alterations of the Common Areas in accordance with the Declaration and these By- Laws;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Property;

(o) indemnifying a trustee, officer or committee member, or former trustee, officer or committee member of the Association to the extent such indemnity is required under Utah law, the Articles of Incorporation or the Declaration; and

(p) to adopt such rules and regulations as the Board may deem necessary for the management of the Property, which rules and regulations shall become effective and binding after they have been adopted by a majority of the Board at a meeting called for that purpose, and they are mailed to the Members in the same manner as notice is given of a meeting, and are posted in a conspicuous place in the Common Areas. Such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation, and these Bylaws.

3.19 Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these Bylaws, interfere with development of or construction on any portion of the Property, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of

the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11, and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or trustee, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide, or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management. The Board of Trustees may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Trustees may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Trustees may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Books of Account and Reports. The Board of Trustees shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles.

3.22 Borrowing. The Association shall have the power to borrow money for any

legal purpose; provided, the Board shall obtain Member approval as provided for in the Declaration to obtain loans.

3.23 Right to Contract. The Association shall have the right to contract "with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhoods and other owners or residents associations, within and outside the Property; provided, any common management agreement shall require the consent of a majority of the total number of trustees of the Association.

#### **Article IV** **Officers**

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable; such officers shall have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer whenever in its judgment that the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Trustees. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Trustees, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of trustees under Section 3.13.

#### **Article V** **Committees**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

#### **Article VI** **Miscellaneous**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law, the Articles of Incorporation, the Declaration, or these Bylaws.

6.3 Conflicts. If there are conflicts between the provisions of Utah Law, the Articles of Incorporation, the Declaration, or these Bylaws, the conflict shall be resolved by reference to the prior listed authority, as set forth in this sentence.

6.4 Books and Records.

6.4.1 Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage of a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for the purpose reasonably related to his or her interest in a Unit: the Declaration, Bylaws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Property as the Board shall designate.

6.4.2 Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;

- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of the documents requested.

6.4.3 Inspection by Trustees. Every trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a trustee includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, and other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of Trustees, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. Until conveyance of the first Unit to a Person other than a Builder, the Class "B" Member may amend these Bylaws, subject to the requirements of the Declaration, if applicable.

(b) By Members Generally. Except as provided in (a), above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association, and during the Class "B" Control Period, the consent of the Class "B" Member. In addition, the requirements of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to

have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege. If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

6.7. Transfer of Membership. The Association membership held by any Owner of a Unit shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser or mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class "A" Member who has sold his/her Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his/her membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Secretary of the Association before such contract purchaser may vote. Notwithstanding the foregoing, the contract seller shall remain liable for all charges and assessments attributable to the applicable Unit until fee title to the Unit is transferred. In the event that the Owner of any Unit should fail or refuse to transfer the membership registered in his/her name to the purchaser of such Unit upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner, and the applicable Unit, equal to the cost of the Association of affecting any such transfer of the membership upon the books of the Association.

6.8. Enforcement. All Owners, guests or lessees of an Owner and persons under an Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws and any rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for:

A. An action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Trustees or its agent or designee on behalf of the Association, or in an appropriate case by an aggrieved Owner; and/or

B. The Board of Trustees to impose monetary penalties, temporary suspensions of an Owner's right to use the Common Area, or other appropriate discipline so long as any Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing before the Board of Trustees. The Board of Trustees shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board of Trustees.

IN WITNESS THEREOF, the undersigned officer or delegate of the Association hereby certifies that the Board of Trustees has obtained the affirmative written vote or consent of the Owners of Units holding at least fifty-one percent (51%) of the total votes in the Association cast in person or by proxy at a meeting duly called for that purpose of voting on the instrument and consistent with the requirements of Article VI, Section 6.6 of the By-Laws of Oak Park Homeowners Association, Inc., dated June 13, 2000.

DATED this 14 day of December 2013.

**Oak Park Homeowners Association, Inc.**



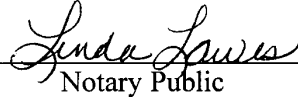
(Signature)

By: Doug Lowes

Its [Title]: HOA PRESIDENT

STATE OF UTAH            )  
  ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 17 day of December, 2013, by Doug Lowes, who by me being duly sworn, did say that he/she is the HOA President of the Oak Park Homeowners Association, Inc.

  
Notary Public