

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

FOR
THE SAND DUNES

A UTAH CONDOMINIUM PROJECT

IN

SALT LAKE COUNTY, UTAH

11799593
02/04/2014 11:14 AM \$194.00
Book - 10209 Pg - 2850-2925
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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
The Sand Dunes

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is recorded by the Sand Dunes Condominium Owners Association, upon its approval by the Owners, and is effective as of the date it is recorded in the Salt Lake County Recorder's Office.

RECITALS

1. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
2. The "Sand Dunes Declaration of Condominium, Covenants, Conditions, and Restrictions" was recorded on November 7, 2002, at the office of the Salt Lake County Recorder beginning at Book 8681, Page 4229, and as Entry No. 8415210 (the "**Enabling Declaration**").
3. The "Amendment No. 1 to Declaration of Condominium, Covenants, Conditions, and Restrictions of The Sand Dunes" was recorded on December 12, 2003, at the office of the Salt Lake County Recorder beginning at Book 8923, Page 346, and as Entry No. 8922935.
4. The "Amendment No. 2 to Declaration of Condominium, Covenants, Conditions, and Restrictions of The Sand Dunes" was recorded on March 11, 2004, at the office of the Salt Lake County Recorder beginning at Book 8956, Page 5344, and as Entry No. 9000788.
5. The "Amendment No. 3 to Declaration of Condominium Covenants, Conditions, and Restrictions of The Sand Dunes" was recorded on March 3, 2005, at the office of the Salt Lake County Recorder beginning at Book 9101, Page 901, and as Entry No. 9313041.
6. The "Amendment No. 4 to Declaration of Condominium, Covenants, Conditions, and Restrictions of The Sand Dunes" was recorded on May 26, 2005, at the office of the Salt Lake County Recorder beginning at Book 9135, Page 7936, and as Entry No. 9386926.
7. Resolution 2005-45 entitled "A Resolution of the City Council of the City of South Jordan, Utah, Requested by the Property Owners within Certain Developments within the City of South Jordan Clarify [sic.] that these Developments Though Platted with the Word 'Condominium' in their Titles, Do in Fact Meet All City Ordinances as Planned Unit Development Subdivisions and are Treated as Such when Applying City Codes" was recorded on September 15, 2005, at Book 9188, Page 5022, and as Entry No. 9490914.

8. The Association, with the authority and approval of the Owners, hereby adopt this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Project and which shall amend and completely replace the Enabling Declaration and all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
9. This Declaration is adopted to replace and update the terms of the Enabling Declaration and any amendments thereto, to further define the rights of the Association and the Owners, and to provide for a general plan for managing the Project; all in furtherance of the Association's efforts to efficiently and economically protect and enhance the value of the Units and the Project and to create a superior living environment.
10. All rights of the declarant defined in the Enabling Declaration have expired pursuant to the terms of the Enabling Declaration and Utah Code Ann. § 57-8-16.5. No declarant approval is required for this amendment.
11. The Association and Owners hereby desire to establish the Terms and Conditions for the mutual benefit and burden of the Association, and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project.
12. The Board of Directors has obtained the approval of the Owners necessary to adopt and record this Declaration and the attached Exhibits.

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

ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **"Act"** shall mean the Condominium Ownership Act codified beginning at Section 57-8-1, Utah Code Annotated.
- 1.2 **"Articles"** shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.3 **"Assessment"** shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
- 1.4 **"Association"** shall refer to The Sand Dunes Condominium Owners Association, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.

- 1.5 **“Bylaws”** shall mean the bylaws of the Association attached as Exhibit D, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Directors.
- 1.7 **“Board of Directors”** or **“Board”** shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce all of the reasonable rules covering the operations and maintenance of the Project.
- 1.8 **“Common Area”** shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area shall consist of all parts of the Property that are not within the individually owned Units. Common Area shall include, but is not limited to, all Limited Common Areas. The definition of Common Area in this Declaration shall supersede the definition of “Common Area and Facilities” in the Act and shall apply in all instances when the term “Common Areas and Facilities” is used in the Act.
- 1.9 **“Common Expenses”** shall mean (a) all sums lawfully assessed against all of the Owners; (b) expense of administration, maintenance, repair, or replacement of the Common Areas; and (c) the costs for: (1) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association as provided for in this Declaration (if any); (2) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (3) utilities (other than utilities that are separately metered and charged to the Units), extermination, landscape maintenance, and other related services; (4) insurance and bonds required or allowed by this Declaration; (5) amounts deposited in reserves; (6) other charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (7) any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.
- 1.10 **“Declaration”** shall mean this Declaration, including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and any and all amendments to this Declaration.
- 1.11 **“Governing Documents”** shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.
- 1.12 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.13 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more

Units to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of the Unit.

- 1.14 “Manager”** shall mean any Person engaged by the Association to manage the Project.
- 1.15 “Occupant”** shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).
- 1.16 “Owner”** shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the County Recorder of Salt Lake County, Utah; however, Owner shall not include a trustee for a deed of trust.
- 1.17 “Person”** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.18 “Plat”** shall mean the record of survey map or maps of the Project (the “condominium plat” as used in the Act) recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments and supplements thereto.
- 1.19 “Project”** shall mean the Property, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith as defined by the Plat and this Declaration and including the Units, the Common Area, and the Limited Common Areas. Project as defined in this Declaration is intended to have the same definition as “Property” as defined in the Act.
- 1.20 “Property”** shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.21 “Rules”** shall mean and refer to the rules adopted by the Association.
- 1.22 “Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.23 “Undivided Interest”** shall mean the interest of that Owner (expressed as a percentage in Exhibit B to this Declaration) in the Common Areas, which shall be applicable for the

purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act.

- 1.24** “Unit” shall mean a Unit as defined on the Plat, which includes (unless otherwise provided for in this Declaration) the land as defined by the boundaries on the Plat and any structure or improvements on that land. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest appurtenant to such Unit. The Units are identified in the Plat as 101 through 134, 201 through 226, and 301 through 330.

ARTICLE 2 THE PROJECT

- 2.1 Submission to the Act.** The Association hereby confirms and restates that the Project is a condominium project as defined in the Act.
- 2.2 Binding Effect of Governing Documents.** The Property is part of the Project and the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents. This Declaration does not supersede Resolution 2005-45.
- 2.3 Project Name.** The Project is named “The Sand Dunes” and is located entirely in South Jordan, Salt Lake County, Utah.
- 2.4 Nature of the Project.** The Project is a detached single family home community that contains ninety (90) Units. It includes roadways and open space. The principle materials with which the homes are constructed is wood frame construction, with a stone, brick, and/or stucco exterior.
- 2.5 Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.6 Registered Agent.** The registered agent of the Association shall be as provided for in the Association’s entity filings with the Utah Division of Corporations and/or the Utah Homeowner Associations Registry.

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

3.1 The Unit.

- (a) The homes are detached one and two story single family homes constructed on the separate individual Units indicated on the Plat. The homes are 2,400 total square feet at a minimum.
- (b) The address of each Unit is identified on the Plat, but that address may or may not be consistent with the actual mailing address of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures located inside the boundaries of a Unit shall be part of the Unit.
- (d) The boundaries of a Unit shall be as depicted and described on the Plat.
- (h) Each Unit, together with its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered and may be inherited or devised by will. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.
- (i) Each Unit shall be assessed separately for taxes, assessments, and other charges of the state of Utah or of any political subdivision or special improvement district or of any other similar authority. The Common Area shall not be subject to separate taxation or assessment.
- (j) Each Owner may separately convey, encumber, or mortgage the Owner's Unit. No Owner may encumber the Common Areas, except to the extent of the Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest and in the event of any foreclosure (judicial or otherwise) the Person taking title shall be subject to this Declaration.

3.2 Limited Common Area.

- (a) **Specific Identification of Limited Common Areas.** The Limited Common Area associated with each Unit shall consist of areas identified on the Plat as further described in this Declaration. To the extent that any description or definition of Limited Common Area on the Plat is inconsistent with the definition or description in this Declaration, this Declaration shall control. The Limited Common Area bordering each Unit is the Limited Common Area for that Unit.

The specific dividing line between the Limited Common Area bordering neighboring Units shall be a line extending from the boundary line between the Units to the street in front of the Unit. The extending line shall be in the same direction as the boundary line and shall be an extension of that line to the road.

- (b) **Limited Common Area Rights.** The right to the exclusive use and occupation of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit, and shall pass with title to the Unit to which it is associated. Notwithstanding this exclusive use and occupation, each Owner and the Association shall have a right of ingress and egress over, across, through, or under the Limited Common Areas as may be reasonably necessary to perform any obligations hereunder, or to perform any necessary or desirable repairs, replacements, restoration or maintenance in connection with the Common Areas or in connection with utilities. The Owner shall landscape, water, and maintain the landscaping on the Limited Common Area appurtenant to the Owner's Unit. The Board may set forth in the Rules complete restrictions on all or some items or specific restrictions or guidelines on what may or may not be kept, installed, or left on or in any Limited Common Areas.

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

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

ARTICLE 4 MAINTENANCE, REMODELING, AND UTILITIES

4.1 Owner Responsibility. Unless otherwise agreed to in writing by the Association, each Owner shall furnish and have the exclusive responsibility for (at the Owner's own expense) all of the maintenance, repair, and replacement of the Owner's Unit, including, but not limited to, the following:

- (a) **Maintenance of Homes, Structures, and Improvements.** Each Owner shall have the obligation to provide all maintenance, repair, and replacement for the home constructed on the Unit, and all other structures and improvements contained on the Unit including, but not limited to, painting, repair, replacement, and care of roofs, gutters, down spouts, window wells, exterior building surfaces, driveways, and landscaping. Each Owner shall paint, repair, and otherwise maintain the exterior and interior his or her home and shall maintain all mechanical devices,

including, but not limited, appurtenant electrical, plumbing, heating, ventilating, and air conditioning systems. The Units and all structures and improvements thereon and that are the responsibility of the Owner to maintain, shall be maintained in such a manner as to preserve and achieve structural integrity, safety, an attractive appearance, and a good condition.

- (b) Utility Lines Serving Unit. The Owner shall be responsible for maintaining all utility lines (including but not limited to sewer, water, power, gas, and electrical) serving the Owner's Unit and any home or structure in or on that Unit to the point such utility lines serve multiple homes or Units.
- (c) Cleaning and Appearance of Units. Each Owner shall be responsible for keeping the Unit and all Limited Common Area appurtenant to an Owner's Unit in a clean, sanitary, good, and uncluttered condition. Each Owner shall be responsible for installing all landscaping on the Owner's Unit, including at a minimum, lawns on all areas not otherwise landscaped. Weeds shall be removed and controlled and plants and trees shall be trimmed and properly maintained on all areas of the Unit not otherwise maintained by the Association as allowed or required pursuant to this Declaration and the Rules.
- (d) Landscaping Requirements. Each Owner shall be responsible for providing full landscaped yards (including landscaping the appurtenant Limited Common Area) on the Owner's Unit within six months of occupancy, weather permitting, or within such shorter time as may be required by South Jordan City. A minimum of one deciduous tree (minimum 2" caliper) or one evergreen tree (minimum 7' tall) shall be planted on each Unit within six months of occupancy, weather permitting. Landscaping shall also include the provision and maintenance of a sprinkling system for the Unit and for the Limited Common Area appurtenant to the Unit. Each Owner shall maintain landscaping on the Unit and the appurtenant Limited Common Area in good condition.
- (e) Fencing. Owners may cause the backyard portion of their Units (areas to the rear of the front-most facing surface of the home) to be fenced in. Fences shall follow Unit lines and shall not encroach on the Common Area. No fencing shall be permitted in the front of a Unit (areas between the street and the front-most facing surface of the home) or on any of the Limited Common Areas. Unless otherwise permitted in the Association's Rules or approved and permitted by the Board in writing at its sole discretion, fencing material shall be solid white vinyl and shall be six (6) feet in total height; provided, however, that this fencing material restriction shall not apply to fencing in existence on the date this Declaration is recorded until the date such fencing is replaced, at which time the replacement fencing must comply with the material restriction in this subsection (e). The fencing material restriction shall not apply to the cement/rock fencing that borders the west boundary of the Project along 4000 West. That fencing shall remain a contiguous cement/rock fence at all times. Owners shall be responsible for maintaining, repairing, and replacing fences that boarder their Units.

- (f) Snow Removal. Owners shall be responsible for removing snow from any sidewalk, path, walkway driveway, and steps in or on their Unit and in Limited Common Areas appurtenant to their Unit.

4.2 Association Responsibility for Maintenance of Common Areas. The Board of Directors shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area. The Association's responsibilities shall include the following: Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the Common Areas, including the following:

- (a) Common Area Improvements. Except as provided herein, the Association shall maintain, repair, and replace all improvements in the Common Areas, including all private roadways, sidewalks, street lights, and light fixtures serving multiple Units.
- (b) Landscaping. The Association shall maintain, repair, and replace all landscaping in the Common Area and shall provide mowing and trimming to the Common Areas.
- (c) Maintenance of Fences. The Association shall be responsible for maintaining, repairing, and replacing those fences that do not border a Unit. Unit owners shall maintain any fences on the border of their Units or within the boundary of their Units.
- (d) Snow Removal. As a Common Expense, the Association shall provide reasonable snow removal within the Project on all Common Areas intended for vehicular traffic. In addition, the Association shall provide snow removal from any sidewalk running parallel to any road, as well as any sidewalk located in the Common Area.

4.3 Owner's Default in Maintenance. In addition to any other action allowed by this Declaration, if an Owner or Occupant fails to: (a) maintain a Unit as required in the Governing Documents, or (b) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board of Directors to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Project, then the Association may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of at least fourteen (14) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice then the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.

4.4 Owner's Damage to Common Area. Subject to the provisions related to insurance responsibility and deductible allocation, in the event that the need for maintenance or repair of Common Area or any improvement thereon is caused through the willful or

negligent acts of an Owner, the Board of Directors may cause such maintenance or repairs to be made by the Association, and may assess the Owner for all costs associated therewith to the extent the repair costs are not paid for by any applicable insurance. If, in the exercise of its business judgment, the Board determines in its sole discretion 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, the Association need not tender the claim to the Association's insurer.

4.5 Construction of and Modifications to Units. Without prior written permission of the Board of Directors, all exterior construction of and modifications to Units, including any remodeling, upgrades, landscaping, or repairs, shall be completed compliant with the other requirements of the Governing Documents. In addition, the following requirements shall apply to all exterior and interior construction of and modifications to Units: (i) no use of the Common Area for staging, storage, assembly, or construction, (ii) no nuisance shall be created as established by law or by the Governing Documents, (iii) no blocking of the Common Area or roadways by vehicles, materials, or persons, (iv) no use of the Association's garbage and disposal facilities, if any, for the disposal of debris, materials, or other items, and (v) all construction debris and trash shall be cleaned up and removed daily.

- (a) Compliance with Building Code. All construction, remodeling, and other repairs and modifications to dwellings and any other structures or improvements located on the Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.
- (b) Board Approval. An owner shall not construct any exterior structure or exterior improvement on a Unit, expand a driveway on a Unit, or make any other exterior improvement, alteration, or modification to a Unit, a dwelling on a Unit, or any other exterior structure on a Unit without the Board's prior approval. The Board shall use its best judgment to insure that all exterior improvements, construction, landscaping, and alterations conform to and harmonize with existing surroundings and structures, and comply with the provisions of this Declaration. Any plans submitted to the Board for approval shall be approved or disapproved in writing within 30 days after submission. If the Board fails to approve or disapprove any submitted plan or specification within 30 days after submission, the Board shall be deemed to have approved the submitted plans.

4.6 Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

- (a) Any capital improvement to the Project that does not materially alter the nature of the Project, may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking lot.

Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.

- (b) Any capital improvement that would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by the written consent of Owners holding at least thirty (30%) of the undivided ownership interest in the Common Areas and must be approved by the Board of Directors. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Unit shall be permitted without (1) the written consent of all directly affected Owners and the written consent of Owners holding 50% of the Allocated Interest in the Association, and (2) proper recorded modifications to the Plat to reflect the changes.

- 4.7 **Utilities.** All utilities for individual Units (except any utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the Unit Owner. The Association may, with the consent of Owners holding 50% of the Allocated Interest in the Association, impose submetering of any utilities (including water) that are used by Unit Owners, that were previously paid for by the Association. Upon receiving the necessary Owner approval, the Board of Directors may provide specific rules, guidelines, and procedures for the submetering and for the allocation of costs and expenses of submetering.

ARTICLE 5 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 5.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the

Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.5 Availability of Documents. The Association shall make available to the Owners, Lenders, and insurers of any Lender current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information.

5.6 Board of Directors. The governing body of the Association shall be the Board of Directors elected and removed as provided in the Bylaws. The Board shall consist of five (5) members. Except as otherwise provided in this Declaration or the Articles of Incorporation, the Board shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Declaration, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Association.

(a) The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members

5.7 Limitation on Authority of Owners, Board Members, Officers, and the Board.

(a) Except as provided herein or in the bylaws, the Board of Directors, any individual owners, and any individual Director or Officer shall have no authority to and may not act on behalf of the Association or the Board of Directors to:

(1) amend or terminate any Governing Document;

- (2) elect or remove members of the Board of Directors;
- (3) establish or change the qualifications, powers, and duties, requirements, or terms of Directors or of the Board of Directors; or
- (4) authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

5.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

5.10 Registration with the State. In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

ARTICLE 6 GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 6.1 Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities, in addition to any others set forth in the Governing Documents or provided by law:
- (a) **Maintenance.** The Association shall make provisions for completing all maintenance, repair, and replacement requirements required of the Association in this Declaration.
 - (b) **Paying Expenses.** The Association shall provide for the payment of Association expenses.
 - (c) **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
 - (d) **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Board's determination as to whether

a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- (e) Hiring Managers and Delegating Responsibilities. The Association shall hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE BOARD OF DIRECTORS HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- (f) Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- (g) Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (i) impose fines; (ii) terminate Owners' rights to receive utility services paid as a common expense; (iii) collect rents directly from tenants if Owners fail to pay Assessments; and (iv) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (h) Discretion in Enforcement. Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - (1) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (A) whether to compromise a claim made by or against the Board or the Association and (B) whether to pursue a claim for unpaid Assessments.
 - (2) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (A) the Association's legal position does not justify taking any or further enforcement action; (B) the covenant, restriction, or rule in the Governing

Documents is likely to be construed as inconsistent with current law; (C) that (i) a technical violation has or may have occurred and (ii) the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (D) it is not in the Association's best interest to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

- (3) Subject to Subsection (4), if the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action.
 - (4) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- (i) Reserve Fund. The Association shall establish and fund a reserve fund and obtain and update a Reserve Analysis as required in this Declaration.
 - (j) Preventing Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (2) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 1% ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the Manager and relatives of the Manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the Manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.
 - (k) Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two weeks' notice of the hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

- (l) Annual Meeting. The Board shall arrange for and conduct an annual meeting at least once a year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (m) 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.
- (o) Review and Audit of Association Finances. At least once every five calendar years, the Association shall have an independent accountant conduct a review of the Association's finances. The Association shall make the review available to the Owners. Any Owner may have an audit conducted of the Association's records, at that Owner's expense, and the Association shall cooperate in providing access to any records needed for that audit. Upon receipt of a request signed by owners holding 20% of the outstanding ownership interests or at the discretion of the Board, the Board shall have an audit conducted of the Association's finances and shall make the audit available to the Owners.
- (p) Reinvestment Covenant Upon Sale or Transfer of Unit. The Board may require the transferee/buyer to pay a fee related to the transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. § 57-1-46, in an amount up to one half of one percent (0.5%) of the value of the Unit at the time of the transfer. A transfer is any change in the ownership of the Unit as reflected in the office of the County Recorder, regardless of whether it is pursuant to a sale of the Unit or not. If a fee is required, the amount shall be set forth by the Board in the Rules. The value of the Unit for purposes of this section shall be the higher of: (1) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; (2) the purchase price paid for the Unit related to the transfer; or (3) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board) and paid for by the Association using an appraiser selected by the transferee of the property from a list of ten appraisers selected by the Association. All or a portion of the reinvestment fee shall be used to pay the Association's costs directly related to the transfer of the Unit, not to exceed \$250. The reinvestment fee may not be enforced against: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; (5) a transfer of title to an inter vivos trust to which the transferee is a settlor or trustor; or (6) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed \$250. The Association shall have authority to record any notice required by law to effectuate this provision. The

Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made, such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

ARTICLE 7 BUDGETS & ASSESSMENTS

- 7.1 Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.
- 7.2 Budget and Regular Assessment.**
- (a) The Board is authorized and required to prepare a proposed budget for each calendar year. The proposed budget for the following calendar year shall be prepared and sent to the Owners not later than thirty (30) days prior to the beginning of each calendar year. The Board may revise the budget from time to time as it deems appropriate.
 - (b) The budget shall cover the period of the next calendar year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates the Board deems appropriate.
 - (d) The Board of Directors shall provide a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
 - (e) The Board shall determine the amount of regular assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Allocated Interest for each Unit.
- 7.3 Payment of Regular Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 Personal Obligation for Assessment.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether

or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with any interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due.

- 7.5 Improvements.** Expenses for improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board.
- 7.6 Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than special Assessments to individual Units) shall be allocated to Owners based on the Undivided Interest applicable to the Unit.
- 7.7 Rules Regarding Billing and Collection Procedures.** The Board may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.8 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.
- 7.9 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 assessed.
- 7.10 Special Assessments to Individual Units.** Special Assessments may be assessed by the Association against a particular Unit and its Owner for:

- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
- (b) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
- (c) Fines, late fees, collection charges, and interest; and
- (d) Attorneys' fees, costs and other professional expenses relating to any of the above.

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

7.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Undivided Interests of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

7.13 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

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

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

ARTICLE 8
NONPAYMENT OF ASSESSMENTS &
JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID
ASSESSMENTS

- 8.1 Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 Collection Charges and Interest.** If the Association does not otherwise adopt or establish substitute billing and collection procedures, including the amount of late fees and interest, in the Rules, the following shall apply. Monthly Assessments shall be due and payable on the first of the month and late if not received by the 10th of that month. Late fees shall be \$25.00 for each month that an Owner's account has an unpaid balance after the due date. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at 2% per month. The Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable charge imposed by a Manager related to collections, as the Board may establish in the Rules.
- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this section 8.3 is separate and distinct from any lien rights associated with the Unit.
- 8.4 Lien.** The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, fines, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after the Enabling Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (a) a lien or encumbrance recorded before this Declaration is recorded, (b) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.

- 8.5 Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort 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 or its assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Ann. Sections 57-1-20 and 57-8-44 to 53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to Brandon G. Myers or his successor, as trustee, for the benefit of the Sand Dunes Condominium Owners' Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 8.8 Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (a) rights to receive a utility service for which the Owner pays a Common Expense, and (b) access to recreational facilities.
- 8.9 Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late.
- 8.10 Attorney 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: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) examine the debtor or others through a formal or informal deposition, at a meeting conducted under 11 U.S.C. § 341 or an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure; (e) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (f) examine the debtor or others related to collections; (g) monitor any bankruptcy proceedings including but not limited to regular monitoring of an

Owner's progress in complying with a confirmed chapter 13 plan for the duration of the plan; (h) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (i) 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.

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

ARTICLE 9 PROPERTY RIGHTS IN UNITS AND COMMON AREA

9.1 General Easements to Common Area and Units.

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

the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.

- 9.2 Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Units, or Unit Owners in the Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted pursuant to this section if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.
- 9.3 Easements for Encroachments.** If any other portion of a home on a Unit, as originally constructed, including yard, fencing, driveway, patio, porch, or deck, encroaches on the Common Area or any other Unit other than the Unit upon which the home is built, then the Owner of said Unit shall have a valid easement for encroachment, and maintenance only to the extent that the encroachment is minor, or less than one foot. The Board of Directors is authorized to establish a policy, by Rule or resolution, for dealing with any encroachments that do not qualify as minor. If any portion of a structure, fixtures, or fence that is otherwise the Association's obligation to maintain or replace, encroaches upon any Unit, a valid easement for encroachment, and maintenance of such structure, shall exist.
- 9.4 Limitation on Easement.** An Owner's Undivided Interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:

- (a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and
- (b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

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

ARTICLE 10 USE LIMITATIONS AND CONDITIONS

- 10.1 Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners.
- 10.2 Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit.
- 10.3 Nuisance.** No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 10.4 Smoking.** It shall be a nuisance and prohibited under Section 10.3 to smoke in the Common Area and to permit or cause any smoke to drift or otherwise enter into another Unit. Neither an Owner complaining of smoke or 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. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit which may require, if other attempts to stop it are unsuccessful, the termination of smoking.

- 10.5 Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless it is approved by the Board of Directors.
- 10.6 Parking.** Unless otherwise permitted by the Association in the Rules, and except for “customary parking”, as permitted by this Section 10.6, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, commercial trucks, commercial vans, or boats) shall be parked, stored, or located within any portion of the Project, including any Unit or Common Area. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks and vans, commercial trucks or vans that are used in the Owner’s or Occupant’s daily work (such that the commercial truck or van leaves the Project during each of the Owner’s or Occupant’s work days) within the parking garage or driveway for each Unit. The Board may adopt Rules relating to the parking of vehicles within and in the immediate adjacent area outside of the Project including, without limitation, (a) rules allowing or causing to be removed any vehicles that are improperly parked, (b) restrictions on the type and condition of vehicles in any customary or temporary parking, (c) restrictions on the time period and duration of customary parking, temporary parking, or visitor parking (e) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners who’s guests violate such Rules, (f) rules concerning on-street parking, (g) designating no parking areas, (h) parking permits, (i) vehicle fluid discharge, and (j) inoperable vehicles.
- 10.7 External Fixtures.** Unless otherwise provided in the Rules and to the extent permissible by applicable law, Owners may construct, erect, or maintain external items and fixtures such as television and radio antennas, satellite dishes, flag poles, clotheslines, and lighting fixtures within their Units without the prior written approval of the Board.
- 10.8 Window Covers.** The Board may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.
- 10.9 External Laundering.** Unless otherwise permitted by the Board, external laundering and drying of clothing and other items are prohibited.
- 10.10 Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except for limited and temporary maintenance inside of a Unit’s garage or as may otherwise be permitted by the Board in the Rules.
- 10.11 Unsightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate thereon. Machinery and equipment not a part of the Units shall be prohibited unless obscured from

view of adjoining Units and Common Area. Unless otherwise provided in the Rules, garbage and recycling bins shall be stored on the side of a Unit and shall not be stored on the Unit's driveway or on any Limited Common area appurtenant to a Unit.

- 10.12 Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Project, except that except that animals of a type generally kept in households such as dogs, cats, birds, fish, and hamsters, may be kept in the Project subject to the Rules and the requirements of this Declaration and consistent with South Jordan City's Code. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes, (b) causes a nuisance, or (c) in the good faith judgment of the Board of Directors, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Directors may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Board of Directors may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including but not limited to requirements for registration, specific fees or deposits to Owners of Units that have animals, the use of leashes, noise and barking limitations, and limitations on the overall number of animals. In an effort to minimize anxiety and fear of the Owners generally, the Association may ban dogs of certain breeds (pure or partial) believed generally to be aggressive including, but not limited to, the following breeds: Pit Bull, Presa Canario, Chow Chow, Doberman Pinscher, Alaskan Malamute, and Rottweiler.
- 10.13 Landscape Maintenance.** Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, or other plantings in the Common Area without the written approval of the Board.
- 10.14 Residential Occupancy.** Except as provided in this section, no Unit may be used for any purpose other than a residential purpose. No trade or business may be conducted in or from any Unit unless:
- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
 - (b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
 - (c) the business activity does not involve Persons (whether on foot or by vehicle) coming onto the Project who do not reside in the Project;
 - (d) the business activity does not involve door to door solicitation of Occupants or Owners of the Project;
 - (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;

- (f) the business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
- (g) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
- (h) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (i) all Owners of the Unit reside in the Unit, in which the business activity is conducted, for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
- (j) the Board's requests for information related to the business as necessary to determine compliance with this section are responded to fully and completely as often as the Board shall determine in its discretion.

10.15 No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions. No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section 10.15 shall be null, void, and of no legal effect.

10.16 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.

10.17 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Board determines in its discretion (by unanimous vote): (a) either (1) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (2) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board.

10.18 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to typical residential use of a Unit or the Project.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.19 shall survive any subsequent transfers of the Unit (voluntary or otherwise).
- (c) As used in this Section 10.18, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.18, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

ARTICLE 11 INSURANCE

- 11.1 Owners Insurance Requirement.** All homes in the project are detached dwellings. Owners are required to obtain their own property insurance for their Units and all homes, structures, and improvements located in or on the Owner's Unit.
- 11.2 Association Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and

standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Premiums for all Association insurance shall be a Common Expense. The Association's policies may contain a reasonable deductible, which shall also be a Common Expense in the event of an insured loss.

- 11.3 Property Insurance.** The Association shall obtain and maintain property insurance covering all insurable improvements, fixtures, and structures of the Common Area, if any. At a minimum, the policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all perils normally covered by "special form" property coverage. The policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy 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. 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.
- 11.4 Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage that would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 Director's and Officer's Insurance.** The Association 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: (a) include coverage for volunteers and employees, (b) include coverage for monetary and non-monetary claims, (c) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (d) 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
- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (b) provide coverage for theft or embezzlement of funds by: (1) Officers and Directors of the Association, (2) employees and volunteers of the

Association, (3) any Manager of the Association, and (4) officers, directors, and employees of any Manager of the Association.

- 11.7 Workers' Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association, if any, to the extent that such insurance is required by law and as the Board deems appropriate.
- 11.8 Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Not Tender Claims That Are Under the Deductible.** If, in the exercise of its business judgment, the Board determines in its sole discretion 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, the Association need not tender the claim to the Association's insurer.
- 11.11 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.

- 11.12 Insurance Trustee.** At Board's discretion or upon written request executed by Owners holding 50% or more of the Undivided Interests, 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.
- 11.13 Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.14 Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with an Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.15 Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.16 Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in 2011 Senate Bill 167 (the final version as enacted by the legislature) that became law in 2011, along with any updates adopted in 2013, 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 community associations shall apply to the Association.

ARTICLE 12 EMINENT DOMAIN

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

- 12.2 Partial Taking of a Unit.** Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.
- 12.3 Taking of Limited Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 12.4 Taking of Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 12.5 Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 12.6 Priority and Power of Attorney.** Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13 TERMINATION

- 13.1 Required Vote.** The Project may be terminated only by the approval of Owners holding 90% of the Undivided Interests or as otherwise provided in Article 12.

13.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.

ARTICLE 14 AMENDMENTS

14.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty percent (60%) of the total Undivided Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.

14.2 Scope of Amendments. This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration.

14.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided herein shall be executed by the Board, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Salt Lake County, Utah.

14.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty percent (60%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein is obtained, each and every Owner: (i) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, and (ii) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

14.5 Amendment to Conform to Law. The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements

otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) the Association must obtain from an attorney who has a significant experience and a regular practice in area of Community Association law and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section;
- (b) the members of the Board must unanimously agree to the Amendment at the time it is recorded;
- (c) the Board must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this section of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (A) notifies the Owner that it intends to amend the Declaration pursuant to this section, (B) provides the Owner a right to object to the amendment within thirty (30) days, and (C) provides instructions on how, when, and where to properly make the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;
- (d) within forty-five (45) days of providing the information to the Owners required by this section, not more than thirty percent (30%) of the Owners object to the amendment in a written notice to the Association; and
- (e) having otherwise complied with all of the requirements of this section, the Board members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Salt Lake County.

14.6 Consent of Two-Thirds Owners to Alter Undivided Interests. Notwithstanding anything to the contrary herein, the consent of two-thirds of the Owners shall be required to alter any Undivided Interest.

ARTICLE 15
INTERPRETATION, CONSTRUCTION, AND APPLICATION
OF DECLARATION

- 15.1 No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 15.2 Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, the Bylaws, and then the Rules.
- 15.3 Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 15.4 Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, simultaneously, consecutively, or alternatively.
- 15.5 Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 15.6 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 15.7 Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the

Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

15.8 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

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

ARTICLE 16 NOTICE

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

- (a) Notice to an Owner from the Association.
 - (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (A) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
 - (B) by a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
 - (C) by written email correspondence to an Owner: (i) that is sent to an email address provided by the Owner for the purpose of Association communications, or (ii) that is emailed to an e-mail address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent. The Association shall comply with any notice from an Owner that

an email address is no longer being used or that designates an alternative email address for use by the Association;

- (D) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
 - (E) by any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (2) Notwithstanding Subsection (1) of this section, the Association shall send all notices by United States mail if an Owner, by written demand, demands that the Association send all notices by United States mail.
 - (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit, whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class United States mail to the Unit.
 - (4) If the posting of a notice on the Unit is permitted, such posting is effective when posted on the front access door to the Unit and any such posting may be removed by the Association the sooner of either (A) two (2) days after the event or action for which notice was given or (B) ten (10) days after the posting.
- (b) Notice to a Lender. Notice to a Lender shall be delivered by first-class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
 - (c) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - (1) by a written notice delivered personally to the Manager, if any, which shall be effective upon delivery;
 - (2) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

- (3) by written email correspondence to the Association: (A) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications or (B) that is emailed to an email address from which the Manager, if any, or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent.
- (4) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 17
ATTORNEY FEES AND COSTS

17.1 Legal Costs Associated with Disputes with Owners.

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

ARTICLE 18
RESERVES

18.1 Requirement for Reserves. The Association shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area, in the amount determined by the Owners annually, 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 shall 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, but subject to the Board's discretion, 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. If required by law, annually, at a special meeting or at the annual meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.

ARTICLE 19
LEASING AND NON-OWNER OCCUPANCY

19.1 Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Unit shall be governed by this section, the Rules, and procedures adopted as allowed in this section.

19.2 Definitions. For the purpose of this section:

(a) **“Non-Owner Occupied Unit”** means:

- (1) for a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or
- (2) for a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(b) **“Family Member”** means:

- (1) the parent, sibling, or child of an Owner and that family member’s spouse and/or children; or
- (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (A) a current Occupant of the Unit or (B) the parent, child, or sibling of the current Occupant of the Unit.

19.3 Restriction on Leasing and Non-Owner Occupancy. Except as otherwise provided in Sections 19.4 and 19.5, no more than 7 Units are permitted to be Non-Owner Occupied at any one time.

19.4 Exceptions for Family Members. If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein,

- (a) Subsection 19.3 shall not apply such that the Unit shall not constitute one of the 7 Units permitted;
- (b) Subsections 19.7(a), 19.7(c), and 19.7(d) shall not apply to that occupancy;
- (c) no written agreement regarding occupancy needs to be created between the Family Member and the Owner; and
- (d) any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the

Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

19.5 Exception for Current Non-Owner Occupancy. If a Unit is occupied by a Non-Owner as of the date of the recording of this Declaration, Subsections 19.3 (such that the Unit shall not constitute one of the 7 Units permitted to be occupied by a Non-Owner), 19.7(a), 19.7(c), and 19.7(d) shall not apply to that Unit until (a) the Owner occupies the Unit; (b) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit occupies the Unit; or (c) ownership of the Unit (as evidenced by the records at the Salt Lake County Recorder's office) changes in any manner. After the occurrence of any of these conditions ((a) through (c) of this Subsection 19.5), the Unit shall be subject to all rental restrictions in the Project.

19.6 Permitted Rules. The Board may adopt Rules requiring:

- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units including requiring rental applications and/or informational forms to be filled out by Owners and/or residents identifying the Unit as Non-Owner Occupied and identifying the Non-Owner Occupants, vehicles, phone numbers, etc.;
- (b) reasonable fees related to the administration of leased and Non-Owner Occupied Units; and
- (c) other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

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

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident;
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board;

- (c) A Non-Owner Occupant may not occupy any Unit for transient, short-term (less than twelve months), hotel, resort, vacation, or seasonal use (whether for pay or not);
- (d) Daily and weekly occupation by Non-Owner Occupants is prohibited (whether for pay or not); and
- (e) The Owner(s) of a Unit shall be responsible for the resident's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for noncompliance with this Declaration, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager, if any, shall not have any liability for any action taken pursuant to this subsection and the Owner shall indemnify and pay the defense costs of the Association, the Board, the Manager, if any, and any of their agents, arising from any claim related to any action taken in good faith by any of them pursuant to this subsection.

**ARTICLE 20
GENERAL PROVISIONS**

- 20.1 Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 20.2 Nonliability of Officials.** To the fullest extent permitted by applicable law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 20.3 Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 20.4 Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or that Owner's guest or Occupant, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by

acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant 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 indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association or (b) the injury or damage occurred by reason of the intentional act of the Association.

- 20.5 Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 20.6 Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner, guest, or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Project and/or residing in this Project, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 20.7 Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include

modifications to a Unit, the Common Area, the Limited Common Area, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

- 20.8 No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

ARTICLE 21 MORTGAGEE PROTECTION PROVISIONS

- 21.1 Notices.** From and after the time that a Mortgagee makes written request to the Association therefor, the Association shall give written notice to such Mortgagee in the event an Owner neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration. Upon written request, a Mortgagee shall be given notice of any damage to the Common Areas if the cost of reconstruction thereof exceeds Ten Thousand Dollars (\$10,000.00), and if the Association learns of any threatened condemnation proceedings or similar proposed acquisition of any portion of the Property.
- 21.2 Mortgage Lien Priority.** The lien for unpaid assessments shall be subordinate to a Mortgage affecting a Unit that is recorded prior to any notice of lien relating thereto, but only to the extent of assessments which become due prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.
- 21.3 Mortgagee Consent to Amendment.** Unless all holders of Mortgages on the individual Units have given their prior written approval, neither the Association nor any other party shall be entitled to:
- (a) Alter the uniform rate of assessment provided herein;
 - (b) Partition or subdivide any Unit or the Common Area or dedicate or transfer all or any part of the Common Areas (provided that the granting of an easement for public utilities or other public purposes consistent with the intended use of the Common Area by the Association shall be permitted); or
 - (c) By act or omission seek to abandon or materially alter the arrangement that is established by this Declaration.

21.4 Restrictions on Developer's Actions and Amendments. So long as there is a Class B membership, the following actions will require the approval of the Federal Housing Administration or the Veterans Administration:

- (a) Annexation of additional properties;
- (b) Dedication of Common Area; or
- (c) Amendment of this Declaration.

Notwithstanding the foregoing or any other provision in this Declaration to the contrary, no consent of the Mortgagees or Owners shall be required in order for the Developer to exercise its right to develop the Convertible Land, to convert the Convertible Land, to withdraw from the Common Area all portions of the Convertible Land that are converted to Units, and to designate Limited Common Areas within such Common Area.

21.5 Reserve Fund for Common Area. Association dues or charges shall include an adequate reserve fund for the maintenance, repair and replacement of those elements of the Common Area that must be repaired or replaced on a periodic basis, and such reserve fund shall constitute part of the regular monthly assessments.

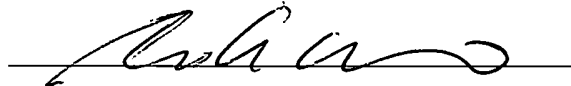
21.6 Management Agreements. Any agreement for professional management of the Association, and any other contract providing for services of the Developer, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause, and without payment of a termination fee, on ninety (90) days written notice.

21.7 Satisfaction of Lenders' Guidelines. In addition to the foregoing, the Association may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the BA, FHA, FHLMC, FNMA or GNMA, or similar entities, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the mortgages encumbering the Units. Each Owner hereby agrees that it will benefit the Association and the Members, as a class of potential mortgage borrowers and sellers of Units, of such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

21.8 Amendment of the Article. This Article 21 shall not be amended without the approval of all Mortgagees.

Dated this 27 day of January, 2014.

THE SAND DUNES CONDOMINIUM
OWNERS ASSOCIATION


By: Gregory A. Wise
Its: HOA President

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 27, day of January, 2014,
before me Julie Kay Kirtan, a notary public, personally appeared
Gregory A. Wise, proved on the basis of satisfactory evidence to be the
person whose name is subscribed to this instrument, and acknowledged that he executed the
same on behalf of The Sand Dunes Owners Association as its President.

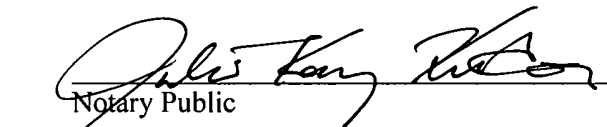

Notary Public



EXHIBIT A

LEGAL DESCRIPTION

Sand Dunes Condominium Phase 1 Property:

Beginning at a point which lies South 0°00'01" East 2639.67 feet along the East line of Section 18 and North 89°59'59" East 40.00 feet from the Northeast corner of Section 18; Township 3 South; Range 1 West, Salt Lake Base & Meridian, said point being a point on the east right-of-way line of 4000 West Street, and traversing thence

South 88°36'02" East 872.17 feet, thence

South 32°35'51" East 627.40 feet, thence

South 41°33'37" East 243.94 feet, to a point on a curve to the left, having a radius of 330.00 feet and a central angle of 24°12'36", thence along the arc of said curve a distance of 139.44 feet, said arc subtended by a chord bearing North 87°25'58" West, a distance of 138.40 feet, to a point on a curve to the right, having a radius of 570.00 feet and a central angle of 23°29'07", thence along the arc of said curve a distance of 233.84 feet, said arc subtended by a chord bearing North 87°47'43" West, a distance of 232.01 feet, thence North 76°03'39" West 281.84 feet, to a point on a curve to the left, having a radius of 330.00 feet and a central angle of 55°07'19", thence along the arc of said curve a distance of 317.48 feet, said arc subtended by a chord bearing South 78°21'47" West, a distance of 305.38 feet, thence

South 48°48'59" West 147.52 feet, to a point on a curve to the right, having a radius of 370.00 feet and a central angle of 41°11'00", thence along the arc of said curve a distance of 265.95 feet, said arc subtended by a chord bearing South 69°24'29" West, a distance of 260.26 feet, thence

South 89°59'59" West 51.79 feet, to a point on a curve to the right, having a radius of 25.00 feet and a central angle of 80°00'00", thence along the arc of said curve a distance of 39.27 feet, said arc subtended by a chord bearing North 45°00'01" West, a distance of 35.36 feet, thence

North 0°00'01" West 869.73 feet, to the point of beginning;

Containing 805,704 sf or 18.50 acres, more or less.

Sand Dunes Condominium Phase 2 Property:

Beginning at a point which lies South 0°00'01" East 2639.67 feet along the East line of Section 18 and North 89°59'59" East 40.00 feet from the Northeast corner of Section 18; Township 3 South; Range 1 West, Salt Lake Base & Meridian, said point being a point on the east right-of-way line of 4000 West Street, and traversing thence South 89°36'02" East 872.17 feet, thence South 32°35'51" East 627.40 feet, thence South 41°33'37" East 243.94 feet, to a point on a curve, to the left having a radius of 330.00 feet and a central angle of 24°12'36", thence along the arc of said curve a distance of 139.44 feet, said arc subtended by a chord bearing North 87°25'59" West, a distance of 138.40 feet, to a point on a reverse curve, to the right having a radius of 570.00 feet and a central angle of 23°29'07", thence along the arc of said curve a distance of 233.64 feet, said arc subtended by a chord bearing North 87°47'57" West, a distance of 232.01 feet, thence North 76°03'39" West 281.94 feet, to a point on a curve to the left having a radius of 330.00 feet and a central angle of 14°54'58", thence along the arc of said curve a distance of 85.91 feet, said arc subtended by a chord bearing North 83°31'04" West, a distance of 85.67 feet, thence North 0°58'47" West 101.28 feet, to a point on a curve to the right, having a radius of 436.50 feet and a central angle of 2°41'18", thence along the arc of said curve a distance of 20.48 feet, said arc subtended by a chord bearing South 88°26'04" West, a distance of 20.48 feet, thence North 2°49'54" West 31.00 feet, to a point on a curve to the right, having a radius of 467.50 feet and a central angle of 7°03'07", thence along the arc of said curve a distance of 57.54 feet, said arc subtended by a chord bearing South 89°23'27" East, a distance of 57.50 feet, thence North 4°52'18" East 149.50 feet, thence North 85°07'42" West 13.74 feet, thence North 4°52'18" East 119.32 feet, thence North 87°52'39" West 130.09 feet, thence South 88°58'07" West 325.05 feet, thence South 0°00'01" East 92.84 feet, thence South 90°00'00" West 85.00 feet, to a point on a curve to the right, having a radius of 15.00 feet and a central angle of 89°59'33", thence along the arc of said curve a distance of 23.56 feet, said arc subtended by a chord bearing North 45°00'00" West, a distance of 21.21 feet, thence South 89°59'59" West 130.98 feet, thence North 0°00'01" West 303.29 feet, to the point of beginning;

Containing 10.52 acres or 458,008 sf more or less.

Sand Dunes Condominium Phase 3 Property:

Beginning at a point which lies South 0°00'01" East 2639.67 feet along the West line of Section 17, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and North 89°59'59" East 40.00 feet from the Northwest corner of said Section 17; said point being a point on the East right-of-way line of 4000 West Street, and traversing thence

South 89°36'02" East 872.17 feet, thence
South 32°35'51" East 265.41 feet, thence
South 57°24'09" West 100.00 feet, thence
North 32°35'51" West 34.03 feet, thence
South 57°24'09" West 31.00 feet, to a point on a non-tangent curve to the right, having a radius of 15.00 feet and a central angle of 90°00'00", thence along the arc of said curve a distance of 23.56 feet, said arc subtended by a chord bearing South 12°24'09" West, a distance of 21.21 feet, thence South 57°24'09" West 8.34 feet, to a point on a curve to the right, having a radius of 136.50 feet and a central angle of 32°35'51", thence along the arc of said curve a distance of 77.66 feet, said arc subtended by a chord bearing South 73°42'05" West, a distance of 76.62 feet, thence South 90°00'00" West 33.16 feet, to a point on a curve to the right, having a radius of 486.50 feet and a central angle of 2°10'13", thence along the arc of said curve a distance of 18.43 feet, said arc subtended by a chord bearing North 88°54'53" West, a distance of 18.43 feet, thence North 02°10'13" East 20.00 feet, thence
North 00°25'12" East 69.70 feet, thence
North 86°37'17" West 65.11 feet, thence

North 87°52'39" West 130.09 feet, thence
South 88°58'07" West 325.05 feet, thence
South 00°00'01" East 92.84 feet, thence
South 89°59'59" West 85.00 feet, to a point on a curve to the right, having a radius of 15.00 feet and a central angle of 89°59'33", thence along the arc of said curve a distance of 23.56 feet, said arc subtended by a chord bearing North 45°00'00" West, a distance of 21.21 feet, thence South 89°59'59" West 130.98 feet, thence
North 00°00'01" West 303.32 feet to the point of beginning.

Containing 5.59 acres or 243,700 s.f., more or less.

EXHIBIT B

UNDIVIDED INTERESTS

Unit Number	Interest %
101	1.111%
102	1.111%
103	1.111%
104	1.111%
105	1.111%
106	1.111%
107	1.111%
108	1.111%
109	1.111%
110	1.111%
111	1.111%
112	1.111%
113	1.111%
114	1.111%
115	1.111%
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321	1.111%
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323	1.111%
324	1.111%
325	1.111%
326	1.111%
327	1.111%
328	1.111%
329	1.111%
330	1.111%

EXHIBIT D

BYLAWS OF

THE SAND DUNES

CONDOMINIUM OWNERS

ASSOCIATION

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**BYLAWS
OF
The Sand Dunes Condominium Owners Association**

These bylaws are hereby adopted and established as the Bylaws of The Sand Dunes Condominium Owners Association. These Bylaws and any amendments thereto shall apply to the Sand Dunes Condominium Owners Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I
DEFINITIONS AND NOTICE**

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE SAND DUNES, as amended, shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II
MEETINGS OF THE OWNERS**

- 2.1 **Annual Meetings.** An annual meeting of the Owners shall be held no less once each calendar year. Unless changed by the Board of Directors, the annual meeting of Owners shall be held on the first Thursday in November of each year for the purpose of electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board of Directors shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient. The Board of Directors may from time to time change the date and time for the annual meeting of the Owners.
- 2.2 **Special Meetings.** Special meetings of the Owners may be called by the Board of Directors, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Undivided Interest of the Association. Any written request for a special meeting shall include the original signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting on each page containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Board of Directors or the President, who shall then call, provide notice of, and conduct a special meeting within 30 days of receipt of the request that shall address the purpose identified on the request, but not other issues.

- 2.3 **Place of Meetings.** The Board of Directors may designate any place in Salt Lake County, Utah that is within 5 miles of the Project for any meeting.
- 2.4 **Meetings by Telecommunications.** Any or all of the Owners may participate in an annual or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting as allowed in this section is considered to be present in person at the meeting. The Board may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.
- 2.5 **Notice of Meetings.** The Board shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners, whether annual or special, in accordance with the notice provisions contained in the Declaration.
- 2.6 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining those Owners entitled to notice of the meeting or to vote at the meeting. The Persons or entities appearing in the records of the Association on such record date as the record Owners of Units in the Project shall be deemed to be the record Owners entitled to notice of the meeting and to vote at the meeting of the Owners.
- 2.7 **Quorum.** At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than thirty percent (30%) of the Undivided Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days in the future at which time the owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."
- 2.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney (when duly authorized by the Owner in writing). If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or

that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act. Such instrument shall be delivered to the Secretary of the Association or to such other officer or person who has been authorized by the Association to accept proxies at the meeting. Such instrument shall be delivered either prior to or at the meeting, but no later than any point after the start of the meeting at which it is announced by the person in charge of the meeting as the final time to deliver proxies.

- 2.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Undivided Interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.10 **Ballots and Written Consent.** As allowed by and consistent with Utah's Revised Nonprofit Corporation Act, the Association may use alternative procedures for obtaining the approvals of owners, such as mailing out ballots to be used as an alternative to meetings and written consents to be used instead of meetings.
- 2.11 **Minutes of Meetings.** The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy, (b) the date of the meeting, (c) the identification of any issue that is voted on or decided in the meeting, (d) the number of votes cast for and against any issue decided upon, and (e) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section 2.11 does not invalidate any action taken at a meeting.

ARTICLE III BOARD OF Directors

3.1 **Number, Tenure, Qualifications, and Election.**

- (a) Number of Members. The Board shall be composed of five (5) persons.

- (b) Member Requirements. To be on the Board, a Person must be an Owner of a Unit or reside in a Unit and be over the age of eighteen (18) years old. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board. Any candidate or member of the Board shall, upon a request by any Owner, produce sufficient documentation establishing that person's right to serve on the Board.
- (c) Term. The term of each Board Member shall be two (2) years. A Board Member may be re-elected to successive terms without limitation.
- (d) Nominations. Not less than sixty (60) days prior to the annual meeting, a request for nominations for open or expiring Board positions shall be provided to all Owners. An Owner may submit his or her own name or the name of any other Owner to serve on the Board. If an Owner submits the name of another Owner, the nomination shall not be valid until the Owner being nominated provides written confirmation that the Owner is willing to serve. Nominations may be accompanied by a short biography or statement. Nominations shall be submitted to the Association Secretary or any Board Member. If the Association gives advance notice of any person seeking election to the Board in a notice, ballot, or proxy, it shall include the names of every person nominated. Only persons who have been properly nominated may be elected to the Board.
- (e) Disqualification. If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this section or until the Board Member is disqualified if no such notice is provided.
- (f) Removal for Failure to Participate. If any Board Member shall fail to appear (in person or by some other means allowing for participation) at four (4) successive regular Board meetings or fifty-percent (50%) or more of the regular meetings within the preceding 12 months, after having received proper notice of the meetings and after the Board has attempted

in good faith to schedule meetings consistent with all of the Board Members' schedules, the other Board Members may by unanimous vote, except for the Board Member to be removed, remove that Board Member and appoint a new Board Member.

3.2 Meetings.

- (a) Regular Meetings. The Board shall hold regular meetings at least quarterly, and more often at the discretion of the Board.
- (b) Who is Entitled to Attend. Board Members may attend all meetings. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance, including a requirement that they remain silent except when comments are solicited by the Board.
- (c) Attendance by Telephone or other Means. The Board may allow attendance and participation at any meeting of the Board by telephone or any other means that allows for the Board Members to hear each other during the meeting.
- (d) Special Meetings. Special meetings of the Board may be called by or at the request of any two (2) Board Members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Board Member. No notice of special meetings is required to be provided to Owners, although any Owner may attend any special meeting if the Owner appears at the physical location of the meeting in person.
- (e) Quorum and Manner of Acting. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board. The Board Members shall act only as a Board, and individual members shall have no powers as such.
- (f) Place and Notice of Meetings. The Board may designate any place in Salt Lake County and within 5 miles of the Project as the place of meeting for any regular meeting called by the Board, but shall in good faith attempt to hold meetings at the Project or in as close a proximity to the Project as reasonably possible. All Board Members and Owners shall be given at least ten (10) days' notice of regular meetings.
- (g) Executive Session.

- (1) The Board or a Committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
- (2) The Board or a Committee holding an executive session shall determine who outside of the Board or members of the Committee as the case may be shall be present during the executive session, and no one else is entitled to be present. All members of the Board shall be entitled to be present during an executive session of the Board. All members of the Committee holding an executive session shall be entitled to be present during an executive session of the Committee.
- (3) Executive sessions may be held to discuss and make decisions related to the following matters:
 - (A) pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including, but not limited to, meetings with the Association's counsel;
 - (B) contracts and purchases related to the Association, including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
 - (C) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; or
 - (D) Rules violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
- (4) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board or the Committee.
- (5) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

- (6) The minutes of the meeting at which an executive session is held shall include:
 - (A) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “to discuss the terms of a management contract with XYZ Company,” or “To discuss the pending litigation with XYZ.”
 - (B) Any decisions made during executive session.
- (7) Care shall be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of members of the Board or the Committee.

3.3. Informal Action and Action by Board Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if each and every Board Member, in writing, either:
 - (1) votes for the action; or
 - (2) votes against or abstains from voting, and waives in writing the right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
 - (1) describing the action taken;
 - (2) signed by each Board Member; and
 - (3) not revoked pursuant to subsection 3.3(d).
- (c) Action taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Board members then in office were present and voted.
- (d) A Board Member may revoke consent to any action given pursuant to this section by communicating in writing that the member has changed his or her vote, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.

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

- 3.4 **Compensation.** No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a Board Member to the extent such expenses are approved by the Board.
- 3.5 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to any other member of the Board or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Undivided Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose.
- 3.6 **Vacancies.** If vacancies shall occur in the Board by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. However, if the Owners vote to remove all of the members of the Board, the Owners shall immediately thereafter and at the same meeting elect new members of the Board using the procedures normally applicable for election of Board members at an annual meeting. Any Board Member elected or appointed due to a vacancy shall serve for the unexpired term of his/her predecessor.

ARTICLE IV OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer.
- 4.2 **Election, Tenure and Qualifications.** The officers of the Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting and thereafter at any time. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office unless, in the Board's discretion, the Board votes to have one person serve as both the Secretary and Treasurer. All officers must be members of the Board during the entire term of their respective offices.
- 4.3 **Resignation and Removal.** Any officer may resign any officer position at any time by delivering a written resignation to any Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. At any time, the Board may appoint new or different officers, with or without cause.

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

in the place and stead of the President in the event of the President, Vice President, and Secretary's resignation, absence, inability, or refusal to act. The Treasurer shall perform such other duties as required by the Board.

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

ARTICLE V COMMITTEES

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

remaining, may continue to act. The Board may fill a vacancy on any Committee at any Board meeting.

ARTICLE VI INDEMNIFICATION

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

indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII AMENDMENTS

- 7.1 **Amendments.** Except as otherwise provided herein or by the Act, these Bylaws may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty percent (60%) of the total Undivided Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

ARTICLE VIII WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) if the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue was made at the meeting;
 - (b) if the objecting Person was not in attendance at the meeting but had proper notice of the meeting, they are waived if no objection to the particular procedural issue was made within sixty (60) days of the date the meeting was held;
 - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue was made within ninety (90) days of the date of the meeting;
 - (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting;


- (e) for any action, vote, or decision that occurred without a meeting, within one hundred twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.

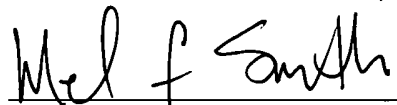
8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Document or other Law that has been violated and a brief statement of the facts supporting the claimed violation.

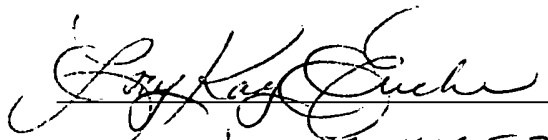
8.3 **Irregularities That Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:


- (a) Any failure to comply with the provisions of the Declaration.
- (b) Any failure to obtain the proper number of votes required to approve of or take a particular action.

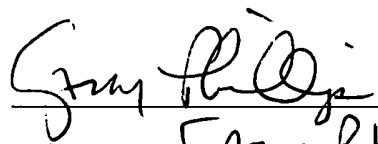
IN WITNESS WHEREOF, the undersigned, constituting all of the Directors of THE SAND DUNES CONDOMINIUM OWNERS ASSOCIATION, hereby execute these Bylaws this 27th day of January, 2014


[print name] Gregory A. Wise


[print name] Mel F Smith


[print name] LORI KAY ERICKSON


[print name] BRET BUTLER


[print name] GARY PHILLIPS