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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
MARMALADE CONDOMINIUM  
(Including Bylaws)

A Utah Condominium Project

July 31, 2018

## TABLE OF CONTENTS

NOTICE OF AGE RESTRICTED COMMUNITY .....	3
RECITALS .....	3
ARTICLE I - DEFINITIONS .....	5
ARTICLE II - PROPERTY DESCRIPTION, RIGHTS AND EASEMENTS.....	8
ARTICLE III – MAINTENANCE OBLIGATIONS.....	11
ARTICLE IV – HOUSING FOR OLDER PERSONS .....	13
ARTICLE V – LIMITATION OF USE OF UNITS AND COMMON AREA .....	16
ARTICLE VI - INSURANCE .....	21
ARTICLE VII – COMMON ASSESSMENTS .....	24
ARTICLE VIII – MORTGAGE PROTECTION.....	29
ARTICLE IX – THE ASSOCIATION .....	31
ARTICLE X – COMPLIANCE, ENFORCEMENT AND APPEAL .....	32
ARTICLE XI - INDEMNIFICATION .....	34
ARTICLE XII - AMENDMENT .....	34
ARTICLE XIII – MISCELLANEOUS PROVISIONS.....	35
EXHIBIT A –LEGAL DESCRIPTION.....	38
EXHIBIT B – PERCENTAGE OF OWNERSHIP INTEREST .....	39
EXHIBIT C - BYLAWS.....	40

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for Marmalade Condominium is made on the date evidenced below by the Marmalade Homeowners, Inc., a Utah nonprofit corporation (the "Association").

### **NOTICE OF AGE RESTRICTED COMMUNITY**

**MARMALADE CONDOMINIUM AND THE MARMALADE HOMEOWNERS, INC. IS INTENDED TO, AND SHALL BE MANAGED, TO PROVIDE HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, AND SHALL PROHIBIT OCCUPANCY BY PERSONS UNDER THE AGE OF 18 YEARS, AS WELL AS ALL OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW; EXCEPT THAT PERSONS UNDER AGE 18 MAY VISIT ANY LIVING UNIT FOR LESS THAN FOURTEEN (14) CONSECUTIVE DAYS WITHOUT VIOLATING THIS DECLARATION (OR OTHER PERIOD OF TIME AS DETERMINED BY THE MANAGEMENT COMMITTEE), BUT UNLESS DETERMINED BY MANAGEMENT COMMITTEE POLICY NO UNDERAGE PERSON'S VISIT SHALL EXCEED A TOTAL OF THIRTY (30) DAYS IN ANY CALENDAR YEAR. FURTHER, EXCEPT AS PROVIDED IN THE POLICIES AND PROCEDURES CONCERNING HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, EACH AND EVERY LIVING UNIT WITHIN THE PROPERTY, IF OCCUPIED, SHALL BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER. WITHOUT LIMITING THE FOREGOING, AT NO TIME SHALL LESS THAN 100% OF THE OCCUPIED LIVING UNITS SUBJECT TO THIS DECLARATION BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER.**

### **RECITALS**

A. This Amended and Restated Declaration including Bylaws supersedes and replaces the Declaration of Condominium of Marmalade Condominium recorded February 5, 1981, as Entry No. 3531311, in the records of the Salt Lake County Recorder, in its entirety and all subsequent amendments or supplements thereto (the "Original Declaration") and including the Bylaws included within the Original Declaration.

B. Pursuant to Section III, Section 3.11 of the Original Declaration, unit owners representing at least three-fifths (3/5) or sixty percent (60%) of the undivided interest in the Common Areas and Facilities have affirmatively approved the adoption of this document.

C. This Amended and Restated Declaration of Condominium including Bylaws shall be binding upon all real property described in **Exhibit A** attached hereto and it is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the property or any unit in the property regime created by this Declaration, that this Declaration, together with the Plat and plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the condominium development mutually beneficial in all of the described units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire property

and upon each such unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of units under security instruments.

D. The Marmalade Condominium, a Utah condominium project, is and continues to be submitted to the Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et seq.*, as amended or substituted from time to time (the "Act"), with the rights, privileges and obligations as set forth herein and in the Act.

## **ARTICLE I DEFINITIONS**

When used in this declaration, including the recitals hereto, the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof have the meaning ascribed by the Act.

**1.1** *“Act”* shall mean and refer to the Utah Condominium Ownership Act (Sections 57-8-1 et seq., Utah Code Annotated 1953), as the same may be amended or substituted from time to time.

**1.2** *“Assessment”* means any charge imposed or levied by the Association on or against an Owner or Unit pursuant to a Governing Document or applicable law.

**1.3** *“Association”* means and refers to the Marmalade Homeowners, Inc., a Utah nonprofit corporation, or any successor incorporated or unincorporated association of the Unit Owners acting under the authority of this Declaration and the Bylaw, formed for the management of the Project, which Association is established and defined in this Declaration.

**1.4** *“Bylaws”* means the Bylaws of the Association, as they may be amended from time to time and are attached hereto in their current form as **Exhibit C**.

**1.5** *“Common Areas and Facilities”* shall mean:

- a. The land and interest in land which this Declaration submits to the terms of the Act.
- b. All common areas and facilities designated as such in the Map.
- c. All limited common areas and facilities.
- d. All foundations, columns, girders, beams, supports, perimeter walls and roofs constituting a portion of or included in the improvements which comprise a part of the project and any stairs, stairways, entrances and exits which are designed for the use of more than one unit.
- e. All Portions of the Project not specifically included within the individual units including, but not by way of limitations, parking spaces, walk-ways, streets, garbage storage and brick walls.
- f. All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.
- g. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

- h. All “Common Areas and Facilities” so defined in the Act, whether or not expressly listed herein.

**1.6 “Common Expenses”** shall mean all sums which are expended on behalf of all the unit owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Management Agreement for operation of the Project, and such rules and regulations as the Management Committee may, from time to time, make and adopt.

**1.7 “Community”** means the Marmalade Condominium, including all Units and Common Area, and all other real property and interests described in the Plat and herein.

**1.8 “Declaration”** means this Declaration and all amendments thereto.

**1.9 “Eligible Holder”** means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Unit number to which the Eligible Holder’s mortgage interest applies.

**1.10 “Good Standing”** means (1) no Assessment (including any fine) imposed against the Owner or Unit is more than 60 days’ past due, and (2) more than 60 days has elapsed since a fine has been assessed against the Owner or Unit.

**1.11 “Governing Documents”** means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations.

**1.12 “Improvements”** means every structure or improvement of any kind, including but not limited to landscaping, Units, decks, porches, awnings, fences, garages, carports, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish authorized in accordance with the Declaration).

**1.13 “Includes” or “including”** means (regardless of capitalization) that the items listed are not an exclusive list, unless the word “only” or similar language is used to expressly indicate that the list is an exclusive list.

**1.14 “Limited Common Area”** mean and include those portions of the Common Area reserved for the use of certain Units to the exclusion of other Units. The Limited Common Areas shall include, but not be limited to, patios, balconies, carports, garages, and parking spaces.

**1.15 “Management Committee” or “Committee”** means the Management Committee of the Association elected by the Owners to manage and operate the Community and to carry out this Declaration, the Bylaws and Rules and Regulations. The term Management Committee is

synonymous and interchangeable with the term “Board” or “Board of Directors” as that term may be used in the Governing Documents or the Utah Revised Nonprofit Corporation Act.

**1.16 “Manager”** or “Managing Agent” means the person or entity that may be retained from time to time by the Association to assist in managing the Property and affairs of the Association.

**1.17 “Mortgage”** means any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded in the Recorder’s Office.

**1.18 “Mortgagee”** means the beneficiary or holder secured by a Mortgage

**1.19 “Notice”** means notice as defined, and shall be carried out as set forth, in the Bylaws.

**1.20 “Owner”** means the person, persons or other entity owning any Unit, as such ownership is reflected in the records of the county recorder, but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Unit.

**1.21 “Percentage Interest”** means the percentage of undivided ownership interest of each Unit Owner in the Common Areas as set forth in **Exhibit B** attached hereto.

**1.22 “Person”** means the legal entity as well as natural person.

**1.23 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) mean the Record of Survey Map recorded in the official records of the Salt Lake County Recorder, as may be amended or substituted from time to time.

**1.24 “Property” or “Project”** means the Marmalade Condominium Project, including all Units and Common Area, and all other real property and interests described in the Plat and herein.

**1.25 “Rules and Regulations”** means and refers to those rules and regulations adopted by the Management Committee from time to time.

**1.26 “Size”** means the square foot of each Unit as shown in the Map and set forth in **Exhibit B** attached hereto.

**1.27 “Unit”** means one of the residential units intended for independent use as defined in the Act and as shown in the Map. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, furnaces, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members

or any other property of any kinds, including fixtures and appliances within any Units, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

**1.28** *“Unit Number”* means the number, letter, or combination thereof which designates a Unit in the attached **Exhibit A**, and in the Map.

## **ARTICLE II PROPERTY DESCRIPTION, RIGHTS AND EASEMENTS**

**2.1** *Property Subject the Declaration, Bylaws and the Act.* It is hereby confirmed and acknowledged that the Project is submitted and subject to the Act and shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and obligations of all parties interested in the Project shall be governed and controlled by, this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Association, and the Act and any amendments thereto as codified from time to time, and, to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control. This Declaration and covenants, conditions and restrictions herein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration and shall inure to the benefit of the Association each Owner thereof.

**2.2** *Description of Improvements.* The project consists of a project containing a total of five (5) condominium Units each containing a bottom level and two (2) additional floors. Each Unit has two (2) bedrooms. The exterior of the building consists predominantly of brick veneer, and the roof is composed of hand split shingles. Each Unit has a patio or balcony attached, as shown on the Map. The Map shows the dimensions of the Units and Common Areas.

**2.3** *Description and Legal Status of Units.* The Improvements included in the project are now or will be located upon the subject Property described above, and all of the Improvements are intended for, and shall be utilized for: single family residential purposes. All Improvements shall be constructed with good quality materials, in a workmanlike manner, and in a style and manner architecturally compatible with other improvements on the project.

**2.4** *Ownership Interest in Common Areas, Percentage Interests.* The Common Areas and Facilities of the Project are defined in Article I of this Declaration and on the Map. Neither the percentage interest in the Common Areas nor the right of exclusive use of a Limited Common Areas shall be separated from the Unit to which it appertains, and even though not specifically mentioned in the instrument of transfer, such percentage of undivided interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. The proportionate share of the Unit Owners in the Common Areas is based on the original square footages that each of the Units bore to the total square footage of all Units, as established for the Project in the Original Declaration. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the



Unit Owners according to their respective percentage or fractional undivided interests in the Common Areas and Facilities as set forth in **Exhibit B**.

**2.5 Form of Unit Conveyance - Legal Description of Unit.** Each conveyance or installment contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Plat Map with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in the Governing Documents.

**2.6 Use and Occupancy.** Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner(s) of a Unit shall be entitled to the exclusive use and benefits of ownership of such Unit. Each Unit, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

**2.7 Easements and Rights Reserved.** In addition to the easements and rights shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements, rights and powers are hereby reserved for the benefit of the Owners and the Association:

(a) **Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. Such encroachment shall not be considered to be encumbrances either to the Common Areas or to the Units. Encroachment referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the project or any part thereof.

(b) **Right of Entry.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee, as its agent, to have access to each Unit and to all Common Areas, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Committee shall also have such rights independent of the; agency relationship. The Committee shall provide for repair of damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Committee or of Unit Owners; provided, that if such damage is a result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damages. Such damage shall be repaired, and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant. hereto shall be collected by the Committee by assessment.

(c) Common Area. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, such rights shall be appurtenant to and pass with the title to each Unit

(d) General Easements of Management Committee. The Management Committee shall have non-exclusive easements to take such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

(e) Utility Easement. There is hereby created a blanket easement upon, across, over and under the subject property for ingress and egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer, gas, telephone, electricity, and other utility services, whether or not any part of such easement is shown on the Map. Each Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his or her Unit. The Committee may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area.

(f) Easements for Maintenance and Repair. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Unit or Limited Common Area for the purpose of performing maintenance authorized herein or determining whether the use of the Unit or an element within the Unit or Limited Common Area is causing damage or harm to the Common or Limited Common Areas. Reasonable notice shall be provided to the Unit occupant prior to Unit entry. "Reasonable notice" means: (i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed entry; or (ii) in the case of emergency repairs, notice that is reasonable under the circumstances, which, at the discretion of the Committee, shall mean attempting to contact the occupant or owner immediately prior to entry via contact information the Association has on record, or via knock on the Unit door. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit. The Association shall repair damage it causes to the Common Areas or to a Unit the Association uses to access the Common Areas within a time that is reasonable under the circumstances.

**2.8 No Right of First Refusal.** The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

**ARTICLE III  
MAINTENANCE OBLIGATIONS**

**3.1 *Owner's Responsibility.***

3.1.1. Units. Maintenance of each Unit shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in good repair and in a clean and sanitary condition, all so as to not interfere in any way with other Owners' Units, or affect the value or use thereof, or the Common Areas, and so as to not detract from the appearance of the Community.

3.1.2. Walls, Ceilings, Floors, Windows, Doors. Each Owner shall, at his own cost and expense, maintain, repair, paint, re-paint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the interior of his Unit and all walls, ceilings, floors, windows and doors forming the boundaries of his Unit. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair and replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, or other appliances or fixtures that may be in, or connected with, his Unit. Each Unit shall be maintained so as not to affect adversely the value or use of any other Unit. In the event any Owner makes any Improvement or addition to any parking space constituting Limited Common Areas reserved for the use of his Unit, the Owner will be solely responsible for maintenance and repair of such Improvements.

3.1.3. Utility Facilities Servicing Only Unit. In addition, each Owner shall be responsible for the maintenance, repair and replacement of the following that may be in, connected solely with, or servicing solely his or her Unit: any utility facilities, plumbing fixtures, water heaters, heating equipment, air conditioners and air cooling units of any type, all sewer and drainage pipes, water and other utility lines (between the points at which the same enter the respective Unit and the points where the same join the utility lines serving other Units), lighting fixtures and bulbs, wiring, receptacles, switches, refrigerators, dishwasher, disposal equipment, ranges, toilets, fireplaces, or other appliances or fixtures.

3.1.4. Limited Common Area. Except to the extent the Association is responsible for such maintenance, each Unit Owner shall, at his or her own cost, maintain, repair and replace the Limited Common Areas appurtenant to his or her Unit and keep the same in a clean, sanitary and attractive condition at all times, including decks, deck extensions, concrete patio pads, and exterior stairs serving only one Unit.

3.1.5. Garages. Each Owner shall maintain, repair and replace the garage doors, including the opening mechanism, and all parts of the garage not required to be maintained by the Association under Section 3.2. Each Owner shall be responsible to keep the garage floor in a clean and sanitary condition.

3.1.6. Common Areas Altered by Owner. Any structure or thing placed or built upon the Limited Common Area by an Owner, including but not limited to decks, deck or patio extensions, planter boxes and flowers, shall be maintained, repaired and replaced by the Owner (and the Owner's successors in interest). Nothing shall be kept or stored on any part of the Common Areas

without the prior written consent of the Committee, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Committee

### **3.2 *Maintenance by Association.***

**3.2.1.** The Association shall maintain the Common Areas, except as otherwise provided in this Article, including all parking areas and the fence that bounds the Property.

**3.2.2** The Committee shall determine, in its sole discretion, the appropriate maintenance and improvement of all parts of the Property. If the Common Area, or any other property maintained by the Association, is damaged by the willful or negligent act of an Owner, its guests, tenants, or invitees, the Owner shall be responsible for all such damage, and the cost to repair such shall be an Assessment against that Owner and that Owner's Unit.

**3.2.3** Garages. The Association shall maintain, repair and replace the concrete floor of garages (but not any flooring or finish installed or maintained on the concrete), the exterior surfaces of garage walls, including siding, and the following parts of the garage roofs: shingles, sheeting or sheathing, underlayment, fascia and sub-fascia, drip edges, gutters, and soffits. Interiors of garages, including but not limited to the eaves, drywall, shelving, flooring and doors shall be the responsibility of the Owner.

**3.2.4** The Association shall maintain, repair and replace all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained within a Unit but that service Common Area or that service more than one Unit. All incidental damages caused to a Unit by the maintenance, alteration, replacement and repair of the Common Areas or such utility services shall be repaired promptly as a common expense.

**3.2.5** The Association shall have the authority to determine that an improvement, landscaping, or planting, including any tree, within any part of the Property is hazardous or causing or is about to cause harm or damage to any part of the Property and to cause the same to be removed or otherwise remedied.

**3.2.6** Additionally, the Association, by and through the Committee, may, but shall not be obligated to, assume an Owner's maintenance responsibility, or take such other action as necessary if, in the opinion of the Committee, the Owner is unwilling or unable to adequately provide such maintenance, or in order to remedy any condition which is in violation of an Association covenant, restriction or rule. Before assuming such maintenance responsibility, the Committee shall provide notice to the Owner of its intention to do so in accordance with Section 2.7(f) of this Declaration, and if such Owner has not commenced and diligently pursued remedial action within the time period stated in the notice, the Association may proceed to carry out such maintenance or action (including levying of fine(s)). The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and

collected in the same manner as Assessments pursuant to this Declaration.

**3.2.7** To the extent not clarified herein, the Association may, by duly adopted resolution of the Committee, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall not be inconsistent with the provisions of this Declaration, unless such determinations merely reflect an established pattern of practice which has been in effect for five or more years, even though inconsistent with the provisions of this Declaration, in which case a resolution shall be recorded outlining the same. Such determinations shall be set forth in a Committee resolution distributed to all Owners and shall be binding against all Owners.

**3.2.8** Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

## ARTICLE IV

### HOUSING FOR OLDER PERSONS

The policies and procedures governing the project as stated herein demonstrate the intent to provide housing for persons 55 years of age or older per townhome. The Marmalade Condominium Association is intended to, and shall be managed, to provide housing for persons 55 years of age or older, and shall prohibit occupancy by persons under the age of 18 years, as well as all other falling within the defined term of Familial Status under Federal Law; except that persons under the age of 18 may visit any Living Unit for less than fourteen (14) consecutive days without violating this Declaration (or other period of time as determined by the Management Committee), but unless determined by Management Committee policy, no underage person's visit shall exceed a total number of thirty (30) days in any calendar year. Further, except as provided in the policies and procedures concerning housing for persons 55 years of age or older, each and every Living Unit within the property, if occupied, shall be occupied by at least one person 55 years of age or older.

**4.1 Advertising, Marketing and Sales.** All advertising, marketing and sales materials or displays of any kind shall reflect that the Project is intended for "housing for older persons." All print ads shall contain the following language: "The Marmalade Condominium project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Marmalade Condominium Association to prohibit permanent residence of person under 18 years of age as is permitted under an exemption of the Act."

**4.2 Approved Occupancy.** The project is intended to be managed for occupancy by persons 55 years of age or older, as set forth in the Act and regulations relating thereto. See 24 C.F.R.

§§100.304. Under the Act providing housing for older persons exempts the project from the prohibition against discrimination on the basis of Familial Status and thus permits the following restriction: “NO CONDOMINIUM MAY BE OCCUPIED BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE, EXCEPT THAT SUCH PERSONS UNDER EIGHTEEN MAY BE PERMITTED TO VISIT FOR REASONABLE PERIODS NOT TO EXCEED TWO CONSECUTIVE WEEKS ON ANY ONE OCCASION OR THIRTY DAYS IN ANY CALENDAR YEAR.” In order to assure that the project meets the age requirements for occupants set forth in the Act, the Association shall be responsible for enforcing and carrying out the terms of this Restated and Amended Declaration, specifically including the following:

4.2.1. Approved Occupant Status. No person shall be permitted to occupy a condominium in the project unless such person is an “Approved Occupant” in accordance with the terms and provisions hereinafter set forth. If it is determined that an occupant has not obtained “Approved Occupant” status, the Association may pursue any remedies available to them under the Restated and Amended Declaration, including imposition of fines against a violator – fines to be set by Management Committee.

4.2.2. Visitors. Persons who are not “Approved Occupants” shall not be permitted to occupy any condominium within the Project; however, visitors do not have to be approved as occupants and shall be permitted to visit for such reasonable periods of time, and upon such reasonable conditions, as provided for from time to time by the majority of the Management Committee, subject to the specific limitations regarding visits by persons under eighteen years of age as hereinabove set forth.

4.2.3. Procedure for Approving Occupants. Persons may become “Approved Occupants” based on the following terms and conditions:

- a) A person desiring to become an “Approved Occupant” shall submit to the Management Committee, a written “Association Membership Application and Age Verification” form which may be obtained from the Committee and shall request issuance of an “Approved Occupant’s Identification Card.”
- b) Within fifteen (15) days of receipt of such written application for an “Approved Occupant”, the Management Committee, shall determine whether such occupancy is consistent with the intent to manage the project as housing for older persons, and. If such occupancy were permitted, whether the project would continue to meet the requirements of the exemption under Section 3607(b)(2)(C) of the Act, and regulations relating thereto, See 24 C.F.R §§100.304; see also Preamble, 54 Fed. Reg. at pp. 3254.56. If such exemption requirements would continue to be met, the occupancy shall be approved, if not, the occupancy shall be denied.
- c) Within said fifteen (15) day period, the Management Committee shall issue written notification to the Applicant, and to the potential seller of the Condominium the Applicant desires to purchase, as to the outcome of the Trustee’s determination as set forth in Paragraph (b) above.

- d) Within ninety (90) days of the issuance of an approval by the Management Committee of an Application for an “Approved Occupant”, the Approved Applicant must request the issuance of an “Approved Occupant’s Identification Card”, which request must be accompanied with written proof of said Applicant’s executed documents indicative of said Applicant’s right of occupancy, which may be due to gift, devise, inheritance or other transfer document recognized under the laws of the State of Utah for transferring occupancy rights. Upon such timely request by the “Approved Applicant” and timely receipt of appropriate documentation, the Management Committee shall issue, or cause to be issued, and “Approved Occupant’s Identification Card.”
- e) If an Approved Applicant fails to timely request an Approved Occupant’s Identification Card, and timely submit appropriate documentation, then such persona shall not be permitted occupancy of the Unit. Said person must again apply to become an “Approved Occupant” in accordance with Provisions as set forth in Subsections (a) through (d) above. An extension of the ninety (90) day period may be granted by the Management Committee under such circumstances as reasonably determine by the Management Committee.
- f) Within fifteen (15) days after written request by an Owner, or another person who has been approved for occupancy, the Management Committee shall, without charge, provide a statement that such person is listed on the Association records as an “Approved Occupant” for such Unit as set forth in the Association’s records.
- g) The Association shall retain all documents and records relating to its consideration of an application for “Approved Occupant” status.

### **4.3 Resale.**

4.3.1 Obligation of Owner; Contents of Agreements. Should a current resident wish to sell his or her condominium, the same procedures described above in Section 4.2 will be followed. The prospective buyer will be required to complete a Membership Application and Age Verification form. Review of this form will be done pursuant to Section 4.2. Owners shall inform all prospective purchasers of this procedure and shall provide the Management Committee with the information required in subsection 4.3.2(a).

Any sale agreement shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of this Restated and Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and (2) state the following: “The Marmalade Condominium project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Marmalade Association, Inc. to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act.” In addition, deeds of trust shall provide that failure by the trustor to comply with the terms of this Restated and Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association as to form and content prior to execution.

4.3.2 Records. The Association shall maintain the following:

- a) A log or other accounting of all persons making inquiry with respect to the sale of a condominium. This record shall reflect, for each inquiry, the name(s) of such person(s), current address, the age of each prospective occupant, and the date of inquiry.
- b) For all persons who execute a purchase agreement with an Owner, the name of each such person(s), their current address and prospective address in the project, the age of each proposed occupant of the dwelling together with a copy of the documents provided to verify their ages, and the date of the agreement.
- c) A log or other record of all persons occupying a condominium. Such record to be updated quarterly and shall include names, address, and ages.
- d) For each subsequent transfer of a condominium, a log or other record identifying the transferor, the transferee, the address of the dwelling, the names and ages of the new occupants, the documentation provided to verify those ages, the method of transfer (sale, devise, etc.), and the date the transfer was approved and by whom.
- e) For the sale or other transfer of a condominium rejected by the Association, a log identifying the persons involved in the proposed transfer and their current addresses, the ages of the prospective occupants, the reasons for the rejection, and the date of the rejection.

**4.4. *Occupancy by at Least One Person 55 years of Age or Older per Condominium.*** The Association will not approve any applicant if the granting of "Approved Occupant" status will defeat the primary purpose of the project which is to provide housing for older persons within the meaning of the Act or is done pursuant to a policy of setting aside a certain number of housing units for persons under 55 years of age. It is expressly provided that the Association shall not set aside a certain number of condominiums for persons under 55 years of age.

## **ARTICLE V LIMITATION OF USE OF UNITS AND COMMON AREAS**

The Units and Common Areas shall be occupied and used as follows:

### **5.1 *Residential Use.***

Units shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No trade, craft, business, profession, commercial, or similar activities shall be conducted on any Unit or in any other portion of the Community if the same causes pedestrian or vehicular traffic which in the Management Committee's determination is in excess of a normal level for residential occupancy; creates a sight or noise nuisance as determined by the Management



Committee; is not merely incidental to the use thereof as a dwelling; or has external visible, audible or other indications of use of the dwelling as anything but as a dwelling, all as determined solely and conclusively by the Management Committee. Owners engaging in any business activities from their Units hereby agree to indemnify, defend, and hold harmless the Association and its officers, Trustees, employees, agents, and other Owners from all claims which may arise from such business activities.

#### **5.2 *Animals.***

Provided that they are not kept, bred, or maintained for any provided that they are not kept, bred, or maintained for any commercial purpose, and provided that they do not become an annoyance or nuisance, for any reason, to any Owner or resident of a Unit. Such animals as are permitted shall be strictly controlled and kept pursuant to Salt Lake City, Utah, ordinances and regulations, and rules and regulations of the management committee. The Management Committee shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets. Pets will be limited to 20 lbs. or less and to two pets per unit. Each unit owner, who has a pet, shall clean up after their pet.

#### **5.3 *Nuisances; Offensive Activities.***

No noxious, offensive or unsightly conditions or nuisances, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities, as determined by the Committee, shall be permitted on any Unit or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area or Unit which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents.

#### **5.4 *Unlawful Activities.***

No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

#### **5.5 *Alterations or Modifications.***

No building, fence, wall, doorway, or other structure, shall be commenced, erected, altered, or placed on any portion of the project, without the unanimous consent of all Owners of Units. All buildings, alterations and additions on the subject property shall be made in a workmanlike manner and shall be architecturally compatible with the rest of the project. No structural changes or change in colors or materials on the exterior of any structure shall be made on the project without the consent of the management committee.

#### **5.6 *Rubbish and Trash.***

Except in areas designated by the Management Committee, no Unit or portion of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, nor shall any rubbish, trash, paper, junk or debris be burned within the project, except in incinerators constructed as part of the project and unauthorized by all Unit Owners. Each Unit and its related area of responsibility shall be kept free of trash and refuse by the Owner of such Unit. No person shall allow any unsightly, unsafe or dangerous conditions to exist on or in any Unit.

Garbage placed in the dumpster provided by the HOA shall be secured by plastic bags. Boxes are required to be flattened and/or broken down to allow complete use of the dumpster by all Owners.

Loose garbage is not allowed because of odor and litter problems caused by emptying the dumpster. No oversized garbage such as used furniture shall be left in the area designated for garbage or any Common Areas.

**5.7 Construction.** Nothing shall be altered or constructed in or removed from the Common Areas, except upon written consent of all Unit Owners.

**5.8 Excavation.** No excavation for stone, gravel or earth shall be made on the subject property unless such excavation is made in connection with the erection of a building, structure, landscaping to other improvement thereon which is in conflict with the terms of this declaration. Contractors retained by any Owner shall not use the dumpster provided by the HOA to deposit any debris. Owners are requested to notify contractors of this requirement and be responsible for its enforcement. In the event waste removal company refuses to empty the dumpster because of contractor debris or other waste the Owner employing such contractor shall be responsible to the HOA for all expenses incurred to remove the debris.

**5.9 Window Coverings.**

Appropriate window coverings must be installed on windows at all times. The color of such window coverings shall be in harmony with surroundings and the exterior of the structure. Appropriateness and harmony shall be determined by the Committee and a window covering shall be promptly removed by an Owner upon the determination by the Committee that it is not appropriate or in harmony with surroundings. No window may be covered by paint, aluminum foil, newspapers, bed sheets, cardboard, blankets, or other similar items.

**5.10 Parking of Automobiles and Other Vehicles.**

The common area driveway is restricted to parking in designated areas by guests, maintenance, or delivery parking only. NO RESIDENT PARKING!! Owners are to advise contractors or delivery people to park along the east retaining wall or on the street to avoid blocking Owner's access. Any damage to trees or other foliage on the Common Area caused by contractors, delivery people or other workmen shall be the responsibility of the Owner requiring the presence of such workmen.

The Management Committee may adopt and amend rules to be more or less restrictive than the provisions herein, and to otherwise regulate and govern the parking of vehicles in the Property, including the Units. An Owner may be fined and be assessed the expense of removing any vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

**5.11 Clothes Lines and Materials.**

No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

**5.12 Signs.**

Without unanimous consent of all Owners of Units, a Unit Owner will not permit any sign of any kind to be displayed on the exterior of any Unit or any portion of the Common Areas, except for unobtrusive signs designating Unit locations and names of Unit Owners.

**5.13 *Antenna and Dish Policy.***

Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association within three (3) business days before installing any antenna or dish that is allowed pursuant to this section. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna/dish. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. In the event of a violation of this Section, the Association may bring an action for declaratory and/or injunctive relief and the Owner is subject to a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time as determined by the Management Committee, additional fines of \$10.00 per day will be imposed for each day that the violation continues. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The terms "dish" and "antenna" are to be used interchangeably in the interpretation of the above policy.

**5.14 *Noise Disturbance.***

Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb other residents. Noise disturbances shall subject the Owner of the Unit from which the noise originates to a fine, as levied by the Management Committee in its sole discretion.

**5.15 *Increase in Insurance Cost.*** Nothing shall be done or kept within or upon the Property which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Unit or Common Areas which will result in

cancellation of insurance on any Unit.

**5.16 *Lease Restrictions.***

No Unit in the project may be leased or rented.

**5.17 *Sale of Units.***

Any Unit Owner, who wishes to sell his ownership interest shall give the Management Committee, not less than fifteen (15) days prior to the date of the proposed sale, written notice of the terms of the proposed sale together with the name and address of the proposed purchaser, the amount deemed to constitute the fair market value, together with the amount of any liens and encumbrances thereon. The Management Committee shall at all times have the first right and option to purchase the Unit upon the same terms, which option shall expire fifteen (15) days after the date of receipt by it of such notice. If said option is not exercised within the aforesaid option period, the Owner may, upon the expiration of said option period, contract to sell such ownership. The Management Committee, upon the written request of any prospective, seller, buyer or mortgagee, shall furnish a duly acknowledged certificate of compliance with or a waiver of, this provision of this paragraph. No Unit in the project may be leased or rented to any person, who is not part of the immediate family of the Owner, or unless approved by all Unit Owners.

The provisions of this paragraph 3. 10 shall not apply to any transfer, sale or assignment which occurs as a result of a mortgage's exercise of its right under a mortgage whether through foreclosure, deed or assignment in lieu of foreclosure, or exercise of a power of sale under a trust deed. However, in the event a mortgagee becomes the Owner of or possessor of a Unit as a result of its exercise of such rights, the provisions of this paragraph 3. 10 shall apply to any subsequent transfer, sale or assignment of the Unit by such mortgagee.

**5.18 *Use of Common Area.***

The use of the Common Area is governed by the Management Committee and Owners shall make no installations or improvements thereto.

**5.19 *External Apparatus.***

No Unit Owner shall cause or permit anything (including without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or be placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Management Committee.

**5.20 *Interior Utilities.***

All utilities, fixtures and equipment installed within a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the boundaries of a Unit, shall be maintained, replaced and kept in repair by the Owner thereof. An Owner shall do not act nor any work that will impair any easement nor do any act no allow any condition to exist which will adversely affect the other Unit or Owners.

**5.21 *Association Rules and Regulations.***

In addition to the restrictions and requirements above, the Management Committee from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Units and Common Areas as it may deem necessary or

appropriate. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Management Committee specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## **ARTICLE VI INSURANCE**

### **6.1 Association Insurance.**

6.1.1. Property and Liability Insurance. The Association shall maintain a master insurance policy which includes: (1) blanket property insurance with not less than 100% of the full replacement cost for the physical structures in the condominium project, including Common Areas and Facilities, Limited Common Areas and Facilities, and Units, and including fixtures, improvements and betterments to a Unit made by a Unit Owner, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and (2) liability insurance having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Facilities.

(a) The Association's property insurance shall include coverage for any fixture, improvement, or betterment installed by a Unit Owner to a Unit or to a Limited Common Area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Area element associated with a Unit.

(b) Each Unit Owner is an insured person under the Association's property insurance policy. Each Unit Owner is an insured person under a liability insurance policy that the Association obtains, but only for liability arising from: (1) the Unit Owner's ownership interest in the Common Areas and Facilities, (2) maintenance, repair, or replacement of Common Areas and Facilities, and (3) the Unit Owner's membership in the Association.

6.1.2. Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Committee, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Units plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to the Association or any insurance trustee.

6.1.3. Flood Insurance. If any portion of the Project is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program, the Association shall be required to obtain and pay the premiums upon a “master” or “blanket” policy of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association but not less than the lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (2) 100% of current replacement cost of all such buildings and other insurable property within such area.

6.1.4. Directors and Officers (D&O) Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Committee member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

6.1.5. Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Committee deems necessary from time to time, such as workers' compensation insurance.

6.1.6. Loss Not Exceeding Deductible. If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the policy deductible of the Association and until the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (i) for a Unit to which a loss occurs, the Unit Owner's policy is considered the policy for primary coverage for the damage to that Unit; (ii) the Association shall pay for any loss for any Common Areas and Facilities for which a loss occurs; (iii) a Unit Owner who does not have a policy to cover the damage to that Unit Owner's Unit is responsible for that Unit damage and the Association may, as provided herein, recover any payments the Association makes to remediate that Unit, and (iv) the Association need not tender the claim to the Association's insurer.

6.1.7. The Association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

6.1.8. An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy.

6.1.9. Loss Due to Fault of Another. This Declaration does not prevent a person 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, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (1) any person residing with the Unit Owner, if the Unit Owner resides in the Unit, and (2) the Unit Owner.

6.1.10. Power of Attorney, Insurance Trustee. The Association may enter into an insurance trust agreement with a trustee (the “Insurance Trustee”) who shall thereafter have exclusive

authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Unit, all Owners appoint the Association, or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose. By purchasing a Unit, all Owners appoint the Association, or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

6.1.11. The Association, or insurance trustee if any, shall hold any proceeds of insurance in trust for Unit Owners and their first mortgage holders as their interests may appear. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members. The policies shall include: (1) a waiver of the right of subrogation against Unit Owners individually, (2) that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.

6.1.12. The Association shall use generally acceptable insurance carriers. Specific requirements for qualifications of insurance carriers may be found in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

**6.2. Unit Owner Insurance Responsibility.** For Units, the Association's policy is primary, but the Unit Owner is responsible for the deductible as follows:

6.2.1. If a loss occurs that is covered by the Association's policy and by a Unit Owner's policy, the Association's policy provides primary insurance coverage, but the Unit Owner is responsible for the deductible of the association of Unit Owners, and Coverage A of the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

6.2.2. If a Unit, or Limited Common Area element appurtenant to a Unit, suffers damage as part of a covered loss, the Unit Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Unit damage for that Unit to the amount of the deductible under the Association's policy. If a Unit Owner does not pay the amount required within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against a Unit Owner for that amount.

6.2.3. The deductible under the Association's policy is subject to change from time to time by the Management Committee. The Association shall provide notice to the Owners of any change in the amount of the deductible.

6.2.4. The Association's policy does not cover the contents of a Unit or an Owner's personal property. Each Owner is strongly encouraged to obtain insurance coverage for contents

of their Unit, as well as for coverage in the event the Owner has to pay the Association's deductible as provided above.

## **ARTICLE VII COMMON ASSESSMENTS**

**7.1. *Covenant for Assessments.*** Each Owner, by acceptance of a deed conveying any Unit to such Owner, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Common Assessments, Special Assessments, and Individual Assessments. No Owner may exempt itself from liability for Assessments by abandonment of a Unit. No offsets against Assessment amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers.

**7.2. *Fee Due on Transfer of Unit – Reinvestment Fee.*** Each time legal title to a Unit passes from one person to another, within thirty days after the effective date of such title transaction, the new Unit Owner shall pay to the Association, in addition to any other required amounts, a fee in the amount determined by the Management Committee from time to time not to exceed \$500. The following are not subject to the fee: (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, or to a legal entity, such as a trust, in which the Owner or the Owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent for estate planning purposes; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (5) the transfer of a Unit owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed two hundred fifty dollars.

### **7.3. *Annual Budget and Assessment.***

**7.3.1. Adoption of Budget.** The Management Committee shall prepare and adopt an annual budget for the Association which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect. Each budget shall contain a line item showing that year's budgeted contribution to the reserve account. At or prior to each annual meeting, the Management Committee shall furnish to the Unit Owners a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each Unit Owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the Unit Owners who were not present at the annual meeting.

#### **7.3.2. Determination of Assessment.**

- (a) The Management Committee may fix the amount of the assessment



("Annual Assessment") against each Unit for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

(b) The omission by the Management Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(c) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes the equitable change in the amount of the Annual Assessment.

**7.4. *Apportionment of Assessments.*** All Units shall be assessed Annual Assessments and Special Assessments based upon the Percentage Interests of the Units. Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable as provided for below.

**7.5. *Purpose of Assessments.*** The Assessments levied by the Association shall be used for carrying out the purposes and obligations of the Association, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding reserves established by the Association, including a general operating excess and a reserve for replacements; and (f) Any other items properly chargeable as a Common Expense of the Association.

**7.6. *Special Assessments.*** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments (a "Special Assessment"). The Management Committee may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Owner, may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the Special Assessment exceed the votes cast opposing it, and (2) a quorum of Owners holding 30% of the Percentage Interests exists.

**7.7. *Individual Assessments.*** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted ("Individual

Assessments”). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Unit to reimburse the Association for costs or attorney fees incurred in bringing the Unit or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses incurred by the Association relating to the cost of maintenance, repair, or replacement of the individual Units.

## **7.8. Reserve Analysis.**

7.8.1. Reserve Analysis Required. The Committee shall cause a reserve analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.

7.8.2. Reserve Analysis Defined. “Reserve analysis” means an analysis to determine the need for a reserve fund to accumulate reserve funds, and the appropriate amount of any reserve fund. A reserve analysis shall include:

- (1) a list of the components identified in the Reserve Analysis that will reasonably require reserve funds;
- (2) a statement of the probable remaining useful life, as of the date of the Reserve Analysis, of each component identified in the reserve analysis;
- (3) an estimate of the cost to repair, replace, or restore each component identified in the Reserve Analysis;
- (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the Reserve Analysis during the component's useful life and at the end of the component's useful life; and
- (5) a reserve funding plan that recommends how the Association may fund the annual contribution described in number (4) above.

7.8.3. Reserve Analysis Summary Provided to Owners. The Association shall: (1) annually provide Owners a summary of the most recent reserve analysis or update; and (2) provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**7.9. Reserve Fund.** The Association shall establish and maintain a reserve fund, separate from other Association funds, for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditure, and for any other purpose determined from time to time by the Committee. In formulating the budget each year, the Association shall include a reserve fund line item in an amount the Committee determines, based on the reserve analysis, to be prudent. The Committee may not use money in a reserve fund for daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose.

The Committee's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Committee members shall not be held liable for any potential or alleged under-funding of the reserve account.

**7.10. Nonpayment of Assessments.** Unless otherwise provided by resolution of the Management Committee, the Annual Assessments shall be levied and due and payable on a monthly basis on the first calendar day of each month and shall be delinquent if not paid within five (5) days after the due date or such other date established by the Committee (the “date of delinquency”). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

7.10.1. Interest. Delinquent payments shall bear interest at the rate of 10% per annum, or such other lower rate established by the Association from time to time.

7.10.2. Late Charge. Each delinquent payment shall be subject to a late charge in the amount established by the Association from time to time.

7.10.3. Acceleration. If the delinquent installments of Annual Assessments and any charges thereon are not paid in full, the Committee, or its authorized agent, may declare all of the unpaid balance of the Annual Assessment to be immediately due and payable upon not less than ten (10) days’ written notice to the Owner, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

7.10.4. Termination of Common Service and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Management Committee may, after giving notice and an opportunity to request a hearing in accordance with the law and any written procedures of the Association, terminate an Owner’s right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Committee. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Committee shall immediately take action to reinstate the terminated utility services to the Unit.

7.10.5. Remedies under the Act and Other Law. The Association shall have each and every remedy for collection of assessments provided in the Utah Condominium Ownership Act, Utah Code Title 57, Chapter 8, as amended from time to time, and in Utah Code Title 12, and such remedies and provisions shall be deemed to be fully set forth herein. A collection fee shall be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, in addition to any other amount owed to the Association.

**7.11. Lien.** All Assessments and charges imposed, together with damages, fines, interest, costs of collection, late charges, and attorney fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Units against which the Assessment is made and shall be construed as a real covenant running with the land. The recording

of this Declaration constitutes record notice and perfection of the lien established herein. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

**7.12. *Personal Obligation and Costs of Collection.*** Assessments imposed under this Declaration, together with interest and costs and reasonable attorney fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Unit and in a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**7.13. *Appointment of Trustee.*** By acceptance of a deed for a Unit, each Owner as trustor conveys and warrants to trustee in trust for the Association, as beneficiary, with power of sale, the Owner's Unit and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section, the Act, and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the trustee, or substitution thereof, by recording an appointment or substitution of trustee in the records of the local County Recorder. Each Owner hereby also grants to the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**7.14. *Enforcement of Lien.*** The lien provided for in this Article may be enforced by the Association by causing a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, or by foreclosing the lien through a judicial foreclosure, all in the manner provided by the Act and by the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts or the law for the foreclosure of a mortgage, as the case may be. The Association shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner, and an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, the costs and attorney fees associated with which shall be awarded to the Association or the purchaser, as the case may be. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**7.15. *Subordination of Lien to Mortgages.*** The lien provided for in this Article has priority over each other lien and encumbrance on a Unit except a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Unit. The sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve

the Unit from liability or lien for any Assessments or charges thereafter becoming due and shall not relieve any Owner of his or her personal obligation for such amounts.

**7.16. *Statement of Unpaid Assessment & Payoff Information.*** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by the Association, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Unit up to the maximum amount allowed by law.

**7.17. *Application of Payments.*** Payments upon an Owner's account shall be applied first to costs and attorney fees, then to the oldest charges (regardless of type) on the Owner's account.

## **ARTICLE VIII MORTGAGE PROTECTION**

**8.1. *Approval Required.*** In addition to any other approvals required by this Declaration or the Bylaws, the prior approval of two-thirds (2/3) of the Eligible Holders (based upon one vote for each Mortgage owned) or Owners (other than the sponsor, developer or builder) of the Individual Units in the Project must be obtained for the following:

- (a) By act or omission, seek to abandon or terminate the Project.
- (b) Change the pro-rata interest or obligations of any Individual Unit for the purpose of:
  - i. Levying assessments or charges or allocating distribution awards; or
  - ii. Determining the pro-rata share of ownership of each Unit in the Common Areas and Facilities.
- (c) Partition or subdivide any Unit.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Facilities (granting of easements for public utilities or for other public purposes consistent with the intended use of Common Areas and Facilities by the Project shall not be deemed a transfer within the meaning of this paragraph).
- (e) Fail to maintain fire and extended coverage on insurable Common Areas and Facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
- (f) Use hazard insurance proceeds for losses to any condominium property (whether to Unit or to Common Areas and Facilities) for other than the repair, replacement, or reconstruction of such property, except as provided by statute in case of substantial loss to the Unit and/or

Common Areas and Facilities.

**8.2. Request for Approval of Mortgagees.** If an Eligible Holder's consent is a condition for amending the Declaration or Bylaws, then, subject to Section 8.4, the Eligible Holder's consent is presumed if: (1) written notice of the proposed amendment or action is sent by certified or registered mail to the Eligible Holder's address provided to the Association by such Eligible Holder; (2) 60 days have passed after the day on which notice was mailed; and (3) the person designated for receipt of the response in the notice has not received a written response from the Eligible Holder either consenting to or refusing to accept the amendment or action.

**8.3. Rights of First Refusal.** Any "right of first refusal" which may be granted herein shall not impair the rights of the first mortgagee to:

- (a) Foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by mortgagor, or
- (c) To see or lease a Unit acquired by mortgagee.

**8.4 Rights of Eligible Holders.** In addition to the approvals required and the rights provided above, each Eligible Holder shall have the following rights: (1) the right to examine the books and records of the Association upon reasonable notice and at reasonable times; (2) the right, upon written request, to receive an annual financial statement of the Association within ninety days following the end of any fiscal year of the Association; (3) upon written request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings; (4) upon written request to the Association, the right to timely written notice of any proposed termination of the condominium regime; any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which the Eligible Holder holds a Mortgage interest; any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to a Mortgage of the Eligible Holder, where such delinquency has continued for a period of 60 days; and any lapse, cancellation or material modification of any insurance policy maintained by the Association.

**8.5 Title in Mortgagee.** Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title of such Unit by Mortgagee.

**8.6 Taxes and Expenses.** First mortgagees of a Unit may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and Facilities and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas and Facilities and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**8.7 Notice of Default by Individual Unit Borrower.** A first mortgagee of a Unit, upon request, shall be entitled to written notification from the Association of any default in the performance by the individual unit borrower of any obligation under this declaration, or other constituent documents of this Condominium Project, which is not cured within sixty (60) days.

**8.8 Management Agreements.** Any agreement for professional management of the Project, or any other contract providing for services of the developer, sponsor or builder, 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 or less written notice.

**8.9 No priority.** No provision of this Declaration or of the Bylaws or Articles of Marmalade Homeowners, Inc., is intended, nor shall it be construed, to give any Unit owner, or any other party, priority over any rights of the first mortgagee of a Unit pursuant to its mortgage in the case of distribution to such Unit owner of insurance proceeds or condemnation awards for losses to or a taking of a Unit and/or Common Areas and Facilities.

## **ARTICLE IX THE ASSOCIATION**

**9.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Committee may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Committee as provided herein and in the Bylaws.

**9.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Units within the Community shall be a member of the Association ("Member"). The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**9.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Each Owner shall have one (1) vote in matters of the Association for each Unit owned.

**9.4 Powers, Duties and Obligations.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Committee may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Committee cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

(b) The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

(c) **Telecommunications/Fiber Optic/Related Contracts.** Provided the Association already provides such service to the Units, the Committee shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Unit in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the Units, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast must be cast in favor of the service.

## **ARTICLE X COMPLIANCE, ENFORCEMENT, APPEAL**

**10.1 Compliance.** Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**10.2 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Committee the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

10.2.1 Subject to the provisions of this Declaration, to enter the Unit as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Committee shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

10.2.2 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

10.2.3 To levy fines, and a violation of any specific and express rule, regulation, covenant,



restriction, or term of any Governing Document of the Association (a “violation”), and any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Committee from time to time pursuant to a schedule of fines. Repeat and continuous violations shall be set forth in a Resolution or be enforced consistent with Utah law;

10.2.4 To suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected;

10.2.5 To suspend the voting rights of an Owner for as long as the violation continues;

10.2.6 Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its actual attorney fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or

10.2.7 To record, in the records of the County Recorder, against a Unit as to which a violation exists relating to the land or improvements on the land and the noncompliance of such land or improvements with the Governing Documents, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied by the Owner or future Owner of the Unit.

**10.3 Action by Owners.** Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**10.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**10.5 Purchase Subject to Violations.** Buyers shall take ownership of Units subject to any violations of the Governing Documents which may exist concerning the Unit, whether or not such violations were disclosed by the seller of the Unit and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Association

## **ARTICLE XI INDEMNIFICATION**

Every trustee, officer, and officially designated agent of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney’s fees, reasonably incurred

by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a trustee, officer or agent of the Association, or any settlement thereof, whether or not he is a trustee, officer or agent at the time such expenses are incurred, except in such cases wherein the trustee, officer or agent is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Management Committee approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such trustee, officer or agent may be entitled.

**11.1 Premises Liability.** The Association and the Management Committee are and shall remain wholly free and clear of any and all liability to, or claims by, all Unit Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and a Unit Owner shall defend, indemnify and hold harmless the Association and Management Committee against such claim, loss or liability asserted by such Unit Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Unit Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

## **ARTICLE XII AMENDMENT**

**12.1 Amendments.** Any and all of the conditions, restrictions, charges and terms contained in this Declaration may be annulled, waived, changed, modified or added to through a duly adopted amendment to this Declaration.

**12.2 How Proposed.** Amendments to the Declaration shall be proposed to the membership only by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners in Good Standing holding one-third or more of the total Percentage Interests. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

**12.3 Approval Required.** The Unit Owners shall have the right to amend this Declaration and/or the Map upon the approval and consent of three-fifths (3/5) of the Undivided Interests in the Project. Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Management Committee without approval of the Owners if an amendment is necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

**12.4 Execution and Recordation.** An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate county recorder's office.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

**13.1 Priority of Governing Documents.** To the extent possible under the law and in light of the requirement of the Act that organizational documents for a nonprofit corporation shall not conflict with the rights and obligations found in the declaration and bylaws, in the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**13.2 Interpretation.** All questions of interpretation or construction of any provision of the Governing Documents shall be resolved by the Management Committee, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Committee except where powers are expressly restricted. The Management Committee acts in all instances on behalf of the Association, except as expressly limited by the Governing Documents or law.

**13.3 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Unit. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

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

way limit any of the provisions of this Declaration.

**13.5 Joint Owners.** In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest, subject to the provisions of the Bylaws regarding voting by joint owners.

**13.6 Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**13.7 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Management Committee or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association, Management Committee or Owner as to any similar matter.


**13.8 Person to Receive Service of Process.** The person designated to receive service of process on behalf of the Project, in the cases provided by the Act, is the registered agent of the Association as designated by the Association from time to time with the Utah Division of Corporations and Commercial Code.

**13.9 Effective Date.** This Declaration shall take effect upon recording.

[END]

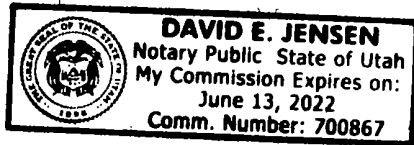
IN WITNESS WHEREOF, Marmalade Homeowners, Inc., has executed this Declaration this 8 day of Aug, 2018.

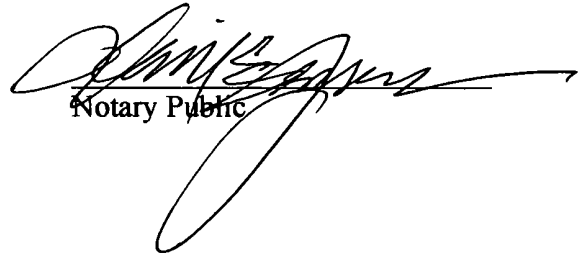
**MARMALADE HOMEOWNERS, INC.**

By:   
Its: Council

STATE OF UTAH )  
County of Wasatch )ss:

Subscribed and sworn to before me on this 8<sup>th</sup> day of August, 2018 by  
General Borders of Marmalade Homeowners, Inc..



  
Notary Public

**EXHIBIT A**

**Legal Description**

All Units and Common Area, MARMALADE CONDO, as set forth on the official plat thereof recorded in the records of the Salt Lake County Recorder for Salt Lake County, state of Utah.

First Parcel No.: 08362910010000

**EXHIBIT B**

Percentage of Undivided Interests

<u>Unit</u>	<u>Square Footage</u>	<u>Percentage of Common Ownership</u>
1	2,194	20%
2	2,178	20%
3	2,170	20%
4	2,170	20%
5	2,170	20%

**EXHIBIT C**

**BYLAWS**

**OF**

**MARMALADE HOMEOWNERS, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the Association is MARMALADE HOMEOWNERS, INC., hereinafter referred to as the "Association." The principal office of the Association shall be located in Salt Lake City, Utah, but meetings of Members and Management Committee may be held at such places within the State of Utah as may be designated by the Management Committee.

**ARTICLE II**  
**DEFINITIONS**

**2.1** *"Association"* shall mean and refer to MARMALADE HOMEOWNERS, INC., its successors and assigns.

**2.2** *"Common Areas and Facilities"* shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

**2.3** *"Declaration"* shall mean and refer to the Declaration of Condominium of Marmalade Condominium, and all amendments thereto, applicable to the properties and recorded in the Office of the Salt Lake County Recorder, State of Utah.

**2.4** *"Member"* shall mean and refer to each of those persons entitled to a membership in the Association as provided in the Declaration and in the Articles of Incorporation of the Association.

**2.5** *"Owner"* shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any Unit which is a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**2.6** *"Project"* shall mean and refer to the condominium project constructed on that certain real property described in the Declaration of Condominium of Marmalade Condominium, and all amendments thereto, recorded in the Office of the Salt Lake County Recorder, and such additional properties as may hereafter be brought within the jurisdiction of the Association.



2.7 **“Unit”** shall mean and refer to any residential unit within the project.

2.8 All other references used, but not otherwise defined herein, shall have the meanings defined in the Declaration.

### **ARTICLE III MEETINGS OF THE MEMBERS OF THE ASSOCIATION**

3.1 **Place of Meetings.** The Association shall hold meetings at such suitable place within the Project, as may be designated by the Management Committee from time to time.

3.2 **Annual Meetings.** An annual meeting of Unit Owners shall be held each year at the Project on the first Monday in June, or at such other time not more than thirty (30) days before or thirty (30) days after such date, as may be designated by written notice of the Management Committee, or their designate, delivered to the Owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, elections shall be held to elect members of the Management Committee, financial reports shall be given, and such other business conducted as may be properly presented.

3.3 **Special Meetings.** Special meetings of the Unit Owners may be called at any time by written notice signed by a majority of the Management Committee, or by the Owners having one-third (1/3) of the total votes, delivered not less than fifteen (15) days prior to the date fixed for said meeting. Such meeting shall be held on the Project, and the notice thereof shall state the date, time and matters to be considered. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.4 **Quorum.** A quorum for the transaction of business at an Owner’s meeting shall consist of a majority of all the undivided ownership interests in Common Areas and Facilities of the project. In the event of quorum is not present at an Owner’s meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. A quorum for the transaction of business at the rescheduled meeting shall be twenty-five percent (25%) of all the undivided ownership interests in the Common Areas and Facilities in the Project.

3.5 **Voting.** At any meeting of Owners, each owner shall be entitled to the number of votes in accordance with this ownership interest in the Common Areas and Facilities. Any Owner may attend and vote at such meeting in person or by agent duly appointed in writing signed by the Owner and filed with the Management Committee. Where there is more than (1) record Owner for any Unit, any or all such Owners may attend any meeting of the Owners, but they are entitled. The Management Committee may accept the votes cast by any one (1) of the record Owners of a Unit, unless such votes are objected to by any of the other record Owners of such Unit, and any disagreement between such record Owners shall be resolved among themselves; provided, however, that in the event the record Owners are unable to resolve the disagreements among themselves and act unanimously, the Management Committee shall not accept the votes of such Owners.

**3.6 Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, or by mail, or electronic means (as set forth herein). If delivery is made by mail, it shall be deemed to have been delivered twenty- four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed (1) to each such person at the address given by such person to the Management Committee or Manager for the purpose of service of such notice, or (2) to the address of the Unit owned by such person, if no address has been given to the Management Committee or the Manager. Owner address (either mailing or electronic email) may be changed, from time to time, by notice in writing to the Management Committee or Manager.

**3.6.1 Notice by Electronic Means.** In any circumstance where notice is required to be given to the Owners or an Owner, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Management Committee deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail; all other Owners are required to provide the Association with a current email address. The Management Committee is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time.

**3.6.2 Electronic Transmission.** Any communication, action or vote under this Article may be delivered by an electronic transmission by an Owner. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section, communications to the Association are not effective until received.

**3.7 Proxies.** At all meetings of members, each member may vote either in person or by proxy. All proxies shall be in writing duly signed and dated by the voting Member and filed with the Secretary of the Association. Every proxy shall be revocable either in writing or personal appearance and shall be automatically void upon conveyance by the Member of his Unit.

**3.8 Binding Vote.** Action on a matter other than the election of Trustees is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

**3.9 Order of Business.** The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Committee members; (g) Unfinished business; (h) New business; and (i) Adjournment.

**3.10 Meeting Procedure.** Rules of order may be adopted by resolution of the Management Committee, otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

**3.11 Action by Written Ballot in Lieu of a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of Trustees; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Management Committee members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Owners and may be described as such in any document. The Management Committee may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

**3.12 Action without Notice and a Meeting.** Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty-day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

#### **ARTICLE IV SELECTION AND TERM OF THE MANAGEMENT COMMITTEE**

**4.1 Number.** The affairs of this Association shall be governed by a Management Committee consisting of three (3) Committee members who need not be Members of the Association.

**4.2** Term of Office. The term of office of each Committee member shall be for a period of one (1) year; and at each annual meeting thereafter the Members shall elect the Committee members.

**4.3** Removal. Any Committee member may be removed from the Management Committee, with or without cause, by a majority vote of the voting members of the Association. In the event of the death, resignation or removal of a Committee member, a successor Committee member shall be selected by the remaining members of the Committee and shall serve for the unexpired term of the predecessor.

**4.4** Compensation. No Committee member shall receive compensation for any services he or she may render to the Association as a Committee member. However, any Committee member may be reimbursed for his actual expenses incurred in the performance of his or her duties.

**4.5** Action Taken without a Meeting. The Management Committee shall have the authority to take any action in the absence of a meeting which they could take at a meeting by obtaining the written waiver and approval of all of the Committee members. Any action so approved shall have the same force and effect as though taken at a meeting of the Management Committee.

## **ARTICLE V NOMINATION AND ELECTION OF MANAGEMENT COMMITTEE**

**5.1** Nomination. Nomination for election to the Management Committee shall be made either (a) by a Nominating Committee which may be established, and shall consist of a chairman, who shall be a member of the Management Committee, and two (2) or more voting members of the Association. The Nominating Committee shall be specified and appointed by the Management Committee prior to each annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for elections to the Management Committee as it shall, in its discretion, deem proper. Nominations may be made from among Members or nonmembers.

**5.2** Election. Elections to the Management Committee shall be by secret written ballot. At such elections the voting Members and proper proxies, may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

## **ARTICLE VI MEETINGS OF MANAGEMENT COMMITTEE**

**6.1** Regular Meetings. Regular meetings of the Management Committee may be held monthly, or at least once every three (3) months, without notice, at such place and hour as may be fixed, from time to time, by resolution of the Management Committee.

**6.2 Special Meetings.** Special meetings of the Management Committee shall be held when called by (a) the President of the Association, or (b) by any two (2) Committee members, after not less than three (3) days written notice to each Committee member.

**6.3 Quorum.** A majority of the Management Committee shall constitute a quorum for the transaction of business. Every act or decision authorized by a majority of the Management Committee present at a duly called and constituted meeting shall represent an act of the entire Management Committee.

**6.4 Open Meetings; Executive Sessions.**

**6.4.1 Open Meetings.** Except as provided in subsection 5.5.3, all meetings of the Management Committee shall be open to Owners. At each meeting, the Committee shall provide each Owner a reasonable opportunity to offer comments. The Committee may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Committee meeting unless the Owner is also a member of the Committee. The president or Committee shall have the authority to exclude an Owner who disrupts the proceedings at a Committee meeting. The Committee may adopt policies governing meetings of the Committee from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Committee shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of the Management Committee, whether in person or by means of electronic communication in real time under Section 5.6, at which the Committee can take binding action.

**6.4.2 Notice of Management Committee Meeting.** At least 48 hours before a Management Committee meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Committee meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner, or the meeting is to address an emergency, and each Committee member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (1) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (2) state the time and date of the meeting; (3) state the location of the meeting; and (4) if a Committee member may participate by means of electronic communication under Section 5.6 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

**6.4.3 Executive Sessions.** In the discretion of the Committee, the Committee may close a Committee Meeting and adjourn to executive session to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

6.4.4 Executive Session Procedure. Except in the case of an emergency, the Management Committee shall vote in an open meeting whether to meet in executive session. If the Committee votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

6.5 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Committee, meetings of the Committee may be conducted by means of electronic communication that allows all members of the Committee participating to be able to communicate orally in real time

6.6 Action Taken by Committee without a Meeting.

6.6.1 Notice, Response. The Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Committee and each member of the Committee, by the time stated in the notice:

(a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and  
(b) fails to demand in writing that action not be taken without a meeting.

6.6.2 Content of Notice. The notice required by Subsection 5.7.1 (the "Notice") shall state:

(a) the action to be taken;  
(b) the time by which a Committee member must respond to the notice;  
(c) that failure to respond by the time stated in the notice will have the same effect as: (1) abstaining in writing by the time stated in the notice; and (2) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and  
(d) any other matters the Association determines to include.

6.6.3 Approval of Action/Decision. Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

(a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Committee members then in office were present and voted; and  
(b) the Association has not received a written demand by a Committee member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

6.6.4 Waiver of Meeting. A Committee member's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Committee member in writing by the time stated in the Notice.

6.6.5 Revocation. A Committee member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

6.6.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 6.7, communications to the Association are not effective until received.

6.7 Waiver of Notice. Any Committee member may, at any time, waive notice of any meeting of the Management Committee in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Committee member at any meeting of the Committee shall constitute a waiver of notice by the Committee member, except where the Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Committee members are present at any meeting of the Committee, no notice to Committee members shall be required and any business may be transacted at the meeting.

6.8 Quorum and Acts. At all meetings of the Management Committee, a majority of the existing Committee members shall constitute a quorum for the transaction of business and the acts of the majority of the Committee members present shall be the acts of the Management Committee. If, at any meeting of the Management Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

6.9 Proxies at Committee Meetings. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Committee member may be considered to be present at a meeting and to vote if the Committee member has granted a signed written proxy: (i) to another Committee member, or other person, who is present at the meeting; and (ii) authorizing the other Committee member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## **ARTICLE VII POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE**

7.1 Powers. The Management Committee shall have the power:

a. to adopt and publish rules and regulations governing the use of the Common Areas and Facilities by the Members and their guests, and to establish penalties for any infraction thereof; and

b. to suspend the voting rights and right to use the Common Areas and Facilities of a Member during any period in which such members shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed (60) days from infraction of published rules and regulations; and

c. to exercise on behalf of the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration; and

d. to declare the office of a member of the Management Committee to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Management Committee; and

e. to employ a manager, an independent contractor, and employees as they deem necessary, and to prescribe their duties

**7.2 Duties.** It shall be the duty of the Management Committee to:

a. cause to be kept a complete record of all its acts and the affairs of the Association and to present a statement thereof to the members at the annual meeting of the Association; and to present such statement at any special meeting upon written request given at least ten (10) days prior to such meeting by two-fifths (2/5) of the Members entitled to vote; and

b. to supervise all officers, managers, agents, and employees of the Association, and to assure that their duties are properly performed; and

c. as more fully provided in the Declaration, to:

i. fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period; and

ii. to send written notice of any assessment to every owner subject thereto at least thirty (30) days in advance of the annual assessment; and

iii. within its discretion the Management Committee may foreclose any lien against any property for which assessments are not paid or bring an action at law against the owner personally, as authorized by the declaration; and

d. to issue, or to cause to be issued, upon demand by any voting Member, a written statement setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Management Committee for the issuance of any statement. If a signed statement verifies that an assessment has been paid, such statement shall be conclusive evidence of payment; and

e. to acquire and maintain adequate liability and hazard insurance on the Common Areas and Facilities owned by the Association; and



- f. to require all officers, managers, and employees having fiscal responsibilities to be bonded as the Management Committee may deem appropriate; and
- g. to cause the Common Areas and Facilities to be maintained; and
- h. to take all other actions directed or permitted in the Declaration.

**7.3 Best Interest of Association and Reliance on Information.** A Committee member or officer shall discharge the Committee member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association. The Management Committee members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Committee member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Committee member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Committee member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Committee member, a sub-committee of the Association or Management Committee of which the Committee member is not a member if the Committee member reasonably believes the sub-committee merits confidence.

**7.4 Conflicts of Interest.**

7.4.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Committee member, (2) a party related to a Committee member, or (3) an entity in which a Committee member is a director or officer or has a financial interest.

7.4.2 A Committee member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Committee member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Committee, (2) the Committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Committee members (even if the disinterested Committee members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

**ARTICLE VIII  
OFFICERS AND THEIR DUTIES**

**8.1** Enumeration of offices. The officers of the Association shall be a President, a Secretary, and a Treasurer, and such other offices as the Management Committee may, from time to time, create by resolution.

**8.2** Election of officers. The election of the officers shall take place at the first meeting of the Management Committee following each annual meeting of the members.

**8.3** Term. The officers of the Association shall be elected annually by the Management Committee and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**8.4** Special Appointments. The Management Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Committee may, from time to time, determine necessary.

**8.5** Resignation and Removal. Any officer may be removed from office with or without cause by the Management Committee. Any officer may resign at any time upon giving written notice to the Management Committee, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**8.6** Vacancies. A vacancy in any office may be filled by appointment from the Management Committee. The officer appointed to such vacancy shall have all of the powers of the appointed office and shall serve for the remainder of the terms of the officer replaced.

**8.7** Multiple Offices. The offices of the Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

**8.8** Duties of the officers are as follows:

**President**

a. The President shall preside at all meetings of the Management Committee and Members and shall assure that orders and resolutions of the Management Committee are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

b. The President shall appoint, remove, and fix the compensation of all managers, agents, and employees of the Association subject to approval by the Management Committee.

c. The President shall enforce these bylaws and perform all of the duties and obligations required or established by law as incident to the office of President.

#### **Vice-President**

The Vice-President shall act in the absence or inability of the President, rendering and performing all duties of the President with full authority and shall exercise and discharge such other duties as may be required of him by the President.

#### **Secretary**

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Management Committee and of the Members; keep the seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Management Committee and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the President. He shall receive and attend to all correspondence and perform all of the duties and obligations incident to the office of Secretary.

#### **Treasurer**

The Treasurer shall receive and deposit appropriate bank accounts the monies of the Association and such funds as directed by the President or by resolution of the Management Committee; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual examination of the Association to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting.

### **ARTICLE IX COMMITTEES**

The Association may appoint a Management Committee as Provided in the Declaration, and a Nominating Committee as provided in these Bylaws. In addition, the Management Committee shall appoint other committees as deemed appropriate in carrying out the requirements and purposes of the Association.

### **ARTICLE X BOOKS AND RECORDS**

The Association shall maintain within the state of Utah all documents, information and other records of the Association in accordance with the Governing Documents, the Act, and the Utah Revised Nonprofit Corporation Act.

## 10.1 General Records.

10.1.1 Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws and Articles of Incorporation, (2) minutes of all meetings of the Association and of the Management Committee; (3) a record of all actions taken without a meeting by the Association members or the Management Committee; (4) a record of all actions taken by a committee in place of the Management Committee on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Management Committee or any committee of the Management Committee.

10.1.2 Resolutions and Rules. The Association shall maintain (1) a record of the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

10.1.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

10.1.4 Records at Principal Office. The Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the minutes of all Owners' meetings for a period of three years; (3) records of all action taken by Owners without a meeting, for a period of three years; (4) all written communications to Owners generally as Owners for a period of three years; (5) a list of the names and business or home addresses of the current officers and Management Committee members; (6) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (7) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

10.1.5 Form of Records. The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

10.2 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Unit,

an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Management Committee to the person(s) making the request within ninety days after the end of each fiscal year. From time to time, the Management Committee, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association.

### 10.3 Availability of Records to Owners.

10.3.1 Owner May Elect Method. An Owner may elect whether to: (1) view and copy records in person, (2) receive hard copies of records, or (3) receive the records electronically.

(a) In Person. If an Owner elects to view and copy records in person, the Owner must bring imaging equipment to the inspection which shall be at a reasonable place, and during such hours specified by, the Association and the Association shall provide the necessary space, light, and power for the imaging equipment.

(b) Receive Hard or Electronic Copies. If an Owner elects to receive hard copies of records or to receive records electronically, the Owner may request a recognized third party duplicating service to make the copies and any necessary electronic scans of documents, in which case, the Association shall arrange for the delivery and pick up of the original documents, and the Owner shall pay the duplicating service directly. If the Association makes the copies or electronic scans, the Owner shall pay the Association the reasonable cost of the copies or of any necessary electronic scans of documents, which may not exceed: (1) the actual cost that the Association paid to a recognized third party duplicating service to make the copies or electronic scans; or (2) if an agent of the Association makes the copies or any electronic scans, 10 cents per page and \$15 per hour for the person's time making the copies or electronic scans. If the Owner requests a recognized third party duplicating service make the copies or electronic scans

10.3.2 Availability of Records Kept at Principal Office. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the records in Section 9.2.4 above.

10.3.3 Availability of Other Records - Proper Purpose Required. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the other records of the Association and: (1) the request must be made in good faith and for a proper purpose; (2) the Owner must describe with reasonable particularity the purpose and the records the Owner desires to inspect; and (3) the records must be directly connected with the described purpose.

10.3.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Committee may withhold from inspection or copying any records: (1) considered by the Committee in executive session and the minutes of any executive session, or (2) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the

Committee, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

## **ARTICLE XI INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS**

Members of the Management Committee, the officers and any agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

When an officer, agent or employee of the Association or member of the Management Committee is sued for liability for actions undertaken in his or her role as a member of the Management Committee, officer, agent or employee of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense and may recover costs already expended from the person who so acted. Management Committee members, officers, and agents and employees of the Association are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association but may be recovered from persons whose activity gave rise to the damages.

Beyond (but subject to) the foregoing provisions of this Article, each officer and Committee member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Committee member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Committee member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

## **ARTICLE XII AMENDMENTS**

**12.1** These Bylaws may be amended, at a regular or special meeting of the voting Members upon the vote of majority of a quorum of Members present in person or by proxy.

12.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XIII  
MISCELLANEOUS**

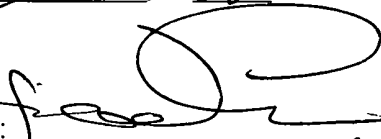
These Bylaws shall be interpreted according to the laws of the State of Utah.

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

13.2 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end of the 31<sup>st</sup> day of December of every year.

13.3 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 8 day of Aug, 2018.

(Sign):   
(Print Name): Kenneth D. Carter President  
