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AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GALENA PARK TOWNHOMES  
(INCLUDING BYLAWS)

A Planned Unit Development

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter “Declaration”) is made on the date evidenced below by Galena Park Townhomes Owners Association, Inc. (hereafter “Association”).

## RECITALS

A. The property subject to this Declaration is the Galena Park Townhomes residential unit development in Salt Lake County, State of Utah. Exhibit “A” of this Declaration further defines the property subject to this Declaration. All Units therein are part of the Association and each Owner of a Unit is a member thereof. The Association is created as a planned unit development and contains certain Common Area, Limited Common Area and easements for the benefit of the Owners of Units therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Galena Park Townhomes supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Declaration of Covenants, Conditions, and Restrictions for Galena Park Townhomes, recorded September 19, 2014 as Entry No. 11916385, records of the Salt Lake County Recorder, State of Utah (the “Original Declaration; First Amendment to Declaration of Covenants, Conditions and Restriction for Galena Park, recorded February 17, 2015 as Entry No. 11993816, Salt Lake County Recorder, State of Utah (“First Amendment”); and Second Amendment to Declaration of Covenants, Conditions and Restrictions for Galena Park Townhomes, recorded May 21, 2018 as Entry No. 12775960, Salt Lake County Recorder, State of Utah (“Second Amendment”).

D. Pursuant to Utah Code § 57-8a-104 and the Original Declaration, 67% of the voting interests of the Association have voted affirmatively to adopt this Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

## ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

**1.1 “Act”** shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

**1.2 “Area of Common Responsibility”** shall mean and refer to the area for which the Association is responsible, including the maintenance, repair, replacement, regulation and administration of Common Area and Facilities.

**1.3 “Area of Personal Responsibility”** shall mean and refer to the area for which each Owner is responsible, including each Lot or Unit.

**1.4 “Articles of Incorporation”** shall mean and refer to the Articles of Incorporation for the Association.

**1.5 “Assessment”** means any charge imposed or levied by the Association on or against an Owner or Unit pursuant to the terms of the Governing Documents or applicable law, including (1) annual/regular assessments; (2) special assessments; and (3) individual assessments as set forth below.

**1.6 “Association”** means and refers to the Galena Park Townhomes Owners Association, Inc., or such successor association of the Unit Owners acting under this Declaration.

**1.7 “Base Assessment”** shall mean and refer to the amount of the monthly installment of the annual Assessment established by the Board of Directors for any fiscal year.

**1.8 “Board” or “Board of Directors”** shall mean and refer to the governing body of the Galena Park Townhomes Owners Association, Inc. selected in accordance with this Declaration.

**1.9 “Bylaws”** shall mean and refer to the Bylaws of the Galena Park Townhomes Owners Association, Inc. (attached hereto as **Exhibit B**), as they may be amended from time to time.

**1.10 “Capital Improvement”** shall mean and refer to any nonrecurring expenses (as opposed to day-to-day expenses, and all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

**1.11 “City”** shall mean and refer to the City of Draper, County of Salt Lake, Utah.

**1.12 “Common Area” or “Common Area and Facilities”** shall mean and refer to all common elements, amenities and facilities in the Project, including, but not limited to (i) all the parks, open space, detention basins, landscaping, street lighting, perimeter and preservation fences, sidewalks, trails, walking paths, parking spaces and private streets and alleys buildings and improvements not privately owned or dedicated to the City; (ii) all Common Areas designated as such on the Plat; (iii) all utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all owners including without limitation utility services such as telephone, electricity, natural gas, water and sewer; (iv) all portions of the Project not specifically included within the individual Lots; and (v) all other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

**1.13 “Common Expenses”** shall mean and refer to: (a) all sums lawfully assessed against the Owners; (b) expenses of administration of the Association; (c) expenses of maintenance, repair or replacement of the Common Area and Facilities; (d) expenses allocated by the Association

among the Owners; (e) expenses agreed upon as “Common Expenses” by the Association; and (f) expenses declared “Common Expenses” by the Declaration.

**1.14 “Community”** means all of the land described in the Plats, including any property annexed into the Project.

**1.15 “Community Standard”** means the standard of conduct, maintenance, or other activity generally prevailing in the community, as set forth in this Declaration, the Bylaws, and as defined or dictated by the Board from time to time.

**1.16 “County Recorder”** shall mean and refer to the Salt Lake County Recorder.

**1.17 “Covenant to Share Costs”** shall mean and refer to any contract, agreement, grant of easements, licenses or covenant to share costs executed by the Association, which is recorded in the Office of the County Recorder for the purpose of creating a cross, reciprocal or other easement for the benefit of the Owners. The Covenant to Share Costs may obligate the Association to share the costs of maintaining certain real, personal or mixed property.

**1.18 “Dedicated Streets”** shall mean and refer to those streets and cul-de sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

**1.19 “Design Guidelines”** shall mean and refer to the architectural and engineering plans and specifications and guidelines provided by the Association for the construction of the Buildings, Lots, Units and other physical improvements in the Project, including by way of illustration but not limitation all structural components and Exterior Materials.

**1.20 “Dwelling Unit” or “Unit” of “Living Unit”** shall mean and refer to a home, residence, dwelling or living unit.

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

**1.22 “Eligible Votes”** shall mean and refer to those votes available to be cast on any issued before the Association or the Board. A vote which is for any reason suspended is not an “eligible vote”.

**1.23 “Exterior Materials”** shall mean and refer to stone, rock, stucco, wood, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the Declarant or its designee. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Board.

**1.24 “Family”** shall mean and refer to one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, with an additional person or persons as domestic help or a caretaker; or (3) a group of not more than three unrelated persons living and

cooking together as a single housekeeping Lot and maintaining a common household, but not as a boarding or rooming house.

**1.25 “Fines”** shall mean and refer to fines levied by the Association against an individual or entity for violations of the Governing Documents. Fines shall be enforced and collected consistent with the Act and are deemed an assessment herein and may be collected as such.

**1.26 “Governing Documents”** shall mean and refer to 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, rules and regulations, Approved Plants Lists, and architectural or design guidelines.

**1.27 “Guest”** shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by an Owner, or unaccompanied, who utilizes the rights of the Owner in and to the Common Area and Facilities.

**1.28 “Improvement”** means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Living 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).

**1.29 “Landscaping”** shall mean and refer to the open space, xeriscape, decorative rock, grass, trees, shrubs, bushes, flowers, plantings, and other like improvements located within the Project, as well as the appurtenant sprinkling and irrigation systems.

**1.30 “Limited Common Areas”** means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein. Limited Common Areas are Common Areas limited to the use of certain Units to the exclusion of other Unit Owners including, but not limited to, driveways and backyards.

**1.31 “Lot”** shall mean and refer to a portion of the Project, other than the Common Areas, intended for any type of independent private ownership and use as may be set out in this Declaration and as shall be shown on the Plat recorded with the County Recorder, as well as any amendments or supplements thereto. Where the context indicates or requires, the term Lot shall include a home, residence, dwelling or living unit or any other physical structure or improvement constructed upon the Lot.

**1.32 “Majority”** shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

**1.33 “Manager”** or **“Managing Agent”** shall mean and refer to the person or entity retained to manage the Property and the Association according to the direction of the Board.

**1.34 “Member”** shall mean and refer to an Owner obligated, by virtue of such Owner’s respective ownership, to be a member in the Association and is a Voting Member of the Association.

**1.35 “Mortgage”** shall mean and refer to any mortgage, deed of trust or other security instrument by which a Lot or Unit or any part thereof or interest therein is encumbered but shall not mean or refer to an executory contract of sale. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot or Unit, or any part thereof or interest therein.

**1.36 “Mortgagee” of “Lender”** shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage, but shall not mean or refer to a seller under an executory contract of sale.

**1.37 “Owner”** means the person, persons or other entity owning any Unit as shown in the records of the Recorder’s Office but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Unit. Regardless of the number of parties participating in ownership of each Unit, the group of those parties shall be treated as one “Owner.”

**1.38 “Permittee”** shall mean and refer to a Guest, tenant, renter, lessee or other permissive user who utilizes the rights of the Owner in and to the Common Area and Facilities.

**1.39 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the Record of Survey Maps entitled “Galena Park Townhomes” recorded at the Recorder’s Office of Salt Lake County, as the same may be amended or substituted.

**1.40 “Property” or “Project”** means all of the real property described in the Plats, including all of the real property described in attached **Exhibit A** and all Units, Common Area, easements and open space.

**1.41 “Rules and Regulations”** means and refers to those rules and regulations adopted by the Board from time to time that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of, the Property and Association.

**1.42 “Townhome”** shall mean single-family residential dwelling unit, with or without walls or roofs in common with other single-family residential Dwelling Units on the Property and constructed upon a numbered Unit reflected on a recorded Plat. “Townhome” includes fee title to the real property lying directly beneath the single-family residential dwelling unit, within Unit boundary lines.

**1.43 “Unit” or “Living Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. 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, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any

structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

## **ARTICLE II - PROPERTY DESCRIPTION & RIGHTS**

**2.1 Property Subject the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property and interests described in the Plats, including any property annexed into the Project, and including the Units described on **Exhibit A** attached hereto, which Declaration and covenants, conditions and restrictions therein 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 each Owner thereof. 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.

**2.2 Description and Legal Status of Units.** The Map shows the Units and building designations, their locations, dimensions from which its areas may be determined together with the Definitions above, and the Common Areas. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.4 Use and Occupancy.** Except as otherwise expressly provided in the Governing Documents, 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.

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

2.5.1 Right of Entry. 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 for the purpose of performing maintenance referred to herein and determining whether or not the Unit is in compliance with the Governing Documents or whether the use of the Unit is causing damage or harm to the Common Areas or Limited Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit.



2.5.2. Utility and Drainage Easements. The Association and any public utility provider shall have an easement through all Units and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Unit and all improvements therein shall be maintained continuously by the Owner of the Unit in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. 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.

No Owner shall interfere with the Master Sub Drain and Storm Drain System and each owner shall be responsible to use such Owner's Lot in a manner consistent with the Master Sub Drain and Storm Drain System so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Board of Directors. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser from the developer/builder, its successor assign. Except as provided below, the cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain or Storm Drain System located within the boundaries of any Lot shall be the responsibility of the Owner. The cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain and Storm Drain System located in the Common Areas or shared by more than one Unit (even though such may be located in a single Unit) shall be the responsibility of the Association, which cost may be allocated by the Association to the Owners benefitted thereby, as determined by the Association.

2.5.3. Police, Fire and Ambulance. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Areas in the performance of their duties.

2.5.4. Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas. This easement is appurtenant to and passes with the title to every Unit, subject to the following:

(1) The right of the Association to limit the number of guests of members using the Common Area.

(2) The right of the Association to suspend the voting rights of a member for any period during which any assessment or portion thereof against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

(3) The right of the Association to enter into agreements or leases which provide for use of Common Areas and facilities by a similar Association for use of the Common Areas and facilities of the other Association, or for cash consideration.

(4) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

(5) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(6) The terms and conditions of the Governing Documents.

(7) The right of the Association, through its Board, to adopt Rules and Regulations concerning the use of Common Areas.

**2.6 No Encroachment.** No Townhome shall encroach upon an adjoining Unit or Common Area without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Board or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

**2.7 Limited Common Area.** A Unit Owner is entitled to the exclusive use of the Limited Common Area adjacent and appurtenant thereto, if any. The Association, through its Board, may adopt rules and regulations concerning use of the Limited Common Areas. Limited Common Area is subject to the rights of the Association as set forth herein.

**2.8 Delegation of Use.** An Owner is deemed to delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. No one who is a non-resident shall have any such delegable right of enjoyment.

**2.9 Unit.** Each Unit is owned in fee simple by the Owner; however, area within the surveyed Unit boundaries but outside the originally constructed Townhome walls shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Unit larger than the Townhome is to allow flexibility in the original Townhome construction. After the initial construction on a Unit, subsequent construction, if any, on that Unit must nevertheless conform to the location, size, and appearance of the originally constructed Townhome.

**2.10 Landscaping.** Any Owner or the Association making any alterations, improvements or replacement of landscaping in the Common Area or Limited Common Area shall only use those plants, shrubs or trees approved by the Association.

## ARTICLE III – RESTRICTIONS ON USE

**3.1 General Use Restrictions.** All of the properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other building shall be placed or used on any Unit at any time without prior written consent of the Board of Directors.

**3.2 Residential Use/Restrictions on Business Activity.** Units shall be used for single-family, residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted on any Unit or in any other portion of the Project unless the business activity (i) is not apparent or detectable by sight or sound from outside the Unit; (ii) conforms to all zoning requirements for the Project; (iii) does not involve door-to-door solicitation of residents of the Project; (iv) does not increase the normal residential traffic flow within the community, and (v) is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board of Directors. All residents of the Galena Park Townhomes community, whether Unit Owner or their Tenant, are required to abide by the terms of the governing documents and may be held jointly and severally liable for a violation of the governing documents.

**3.3 Lease Restrictions.** Consistent with the provisions of the Declaration and the Utah Community Association Act, the leasing and renting of Units by Owners shall be in accordance with the terms herein.

The terms “leasing,” “lease,” “renting,” “rent,” or “rental” used in reference to any Unit within the Association shall mean and refer to the granting of a right to use or occupy a Unit to any person or entity for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean nor include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

3.3.1 Restrictions. All Owners and Units shall be subject to the following restrictions (subject to Section B below):

(1) Rental Cap. It is hereby amended and agreed that no more than **thirty percent (30%) of the Units** (or 23 Units), may be rented at any given time, except as provided within this document or as may be required by law (“Rental Cap”).

(2) No Owner shall be allowed to rent or lease their Unit until such time as Unit has been **Owner-occupied for no less than twelve (12) consecutive months**. “Owner-occupied” for purposes of this Section means a Unit that is owned by an Owner without a renter

or tenant present, whether or not the Owner actually occupies the Unit.

(3) No Owner may lease or rent less than their entire Unit, that is, no individual rooms or partial Unit rentals are permitted, and no Owner may lease or rent any Unit for a period of less than **six (6) consecutive months**.

(4) No short term, daily, weekly or monthly rentals are permitted including, but not limited to, nightly or other short-term rentals through programs such as VRBO, Airbnb, or similar arrangements. Individual room rentals are not permitted, unless and only as long as the Owner also resides in the Unit.

(5) If the City requires that a valid business license be held by anyone who rents out property. Such evidence must be provided by the Owner to the Association upon request to rent the Unit.

(6) Any Owner allowing a non-owner occupant to occupy his or her Unit shall be responsible for the occupant's compliance with the Declaration, Bylaws and Rules.

3.3.2 Exemptions. The following Unit Owners and their respective Units, upon proof sufficient to the Board of Directors, are **exempt** from the rental cap limit outlined herein below unless otherwise stated:

- (1) A Unit Owner in the military for the period of the Unit Owner's deployment;
- (2) A Unit occupied by a Unit Owner's parent, child, or sibling;
- (3) A Unit Owner whose employer has relocated the Unit Owner for two (2) years or less;
- (4) A Unit owned by an entity that is occupied by an individual who:
  - (a) Has voting rights under the entity's organizing documents; and
  - (b) Has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- (5) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:
  - (a) A current resident of the Unit; or,
  - (b) The parent, child, or sibling of the current resident of the Unit.

3.3.3 Multiple Lot Ownership. An Owner is not eligible to rent more than one Unit until the pending applications of:

(1) All Owners who are not currently renting or leasing Units have been approved; and

(2) All Owners who are currently renting or leasing fewer Units than the applicant have been approved.

3.3.4 Application and Approval. Owners desiring to rent or lease their Unit shall submit a written application to the Board of Directors (and/or its agent). Additionally, the Owner shall submit to the Board of Directors within ten (10) days of occupancy by the tenants, the names of those occupying the Unit. The Board of Directors shall monitor and make a determination of whether the rental or lease will exceed the Rental Cap.

(1) The Board of Directors shall:

(a) Approve the application if it determines that the rental or lease will not exceed the Rental Cap; or

(b) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental Cap.

(2) Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board of Directors as set forth in this subsection.

(a) The Board of Directors shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Board of Directors shall approve or deny an application as provided herein and shall notify the Owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.

(b) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease, subject to subsection D of this Section.

(c) The Board of Directors is authorized to adopt, by Board of Directors rule, procedures and policies that govern the creation, organization and process to implement the above-mentioned waiting list. Said procedures may be modified from time-to-time by the Board of Directors to fairly implement the waiting list program described herein.

(3) An application form, the application approval process, a waiting list, and any other rules deemed necessary by the Board of Directors to implement this section shall be established by rules or resolution adopted by the Board of Directors consistent with this Declaration and to ensure the consistent administration and enforcement of the rental restrictions contained herein.

(4) All Owners shall provide the Board of Directors with a copy the executed lease, which shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased. The Lease Agreement may be required to be on a form prescribed by resolution of the Board of Directors.

(5) If an Owner fails to submit the required application, fails to use and submit a copy of the Lease Agreement and rents or leases any Unit, and/or rents or leases any Unit after the Board of Directors has denied the Owner's application, the Board of Directors may assess fines against the Owner or Tenant (as may be consistent with Utah law, Utah Code §57-8-8.1) and the Owner's Unit in an amount to be determined by the Board of Directors pursuant to a schedule of fines adopted by resolution.

In addition, regardless of whether any fines have been imposed, the Board of Directors may proceed with any other available legal remedies, including but not limited to an action to, terminate the rental or lease agreement and removal of any tenant or lessee.

(6) The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Unit as an assessment pursuant to the Declaration.

3.3.5 Grandfathering Clause. All Owners of record prior to the recordation of this amended declaration renting or leasing their Unit, may continue to rent or lease their Unit, for as long as they own the Unit, until such time as the Lot Owner occupies the Unit or title to the Unit changes, for whatever reason, unless an exemption (above) is required, or pursuant to Utah law. At such time title changes, the "grandfathered status" is lost. However, notwithstanding the grandfather provision above, if a Grandfathered Owner fails to re-let their Unit within ninety (90) days of the expiration or termination of a rental or lease agreement by any tenant, then the Grandfathered Owner and Unit shall lose their grandfathered status and become subject to the Rental Cap expressed above and shall apply to the Board of Directors for permission to rent or lease the Unit.

3.3.6 Lease Agreement. Rental and lease agreements shall comply with this subsection.

(1) The Owner shall provide the tenant or lessee with a copy of the Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations ("Governing Documents") then in effect and shall take receipt for delivery of the documents. In the event any such documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board of Directors, or its membership.

(2) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a signed copy of the Approved Lease Agreement.

(3) The Lease Agreement shall be for a minimum of twelve (12) months and is required to have a provision that the tenant or lessee shall abide by the terms of the Governing Documents, or the lessee shall be in violation of the Lease and Governing Documents.

3.3.7 Remedies. In addition to any other remedies available to the Association, the Board of Directors may require the Owner to terminate a lease or rental agreement if the Board of Directors determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the rules and regulations adopted thereto. If an Owner fails to correct any such violations related to their tenants or fails to terminate the lease pursuant to the above, the Owner hereby grants the Board of Directors standing to initiate eviction proceedings against their tenant and considers the Association a third-party beneficiary to its rental/lease agreement.

3.3.8 Additional Rules. The Board of Directors is authorized to promulgate additional rules, procedures and requirements regarding rentals and the rental process as it deems necessary from time to time to give effect to, or further clarify, this amendment.

(1) Fines, Sanctions and Attorney's Fees. The Board of Directors shall have the power to enforce the Association's Governing Documents, including by obtaining injunctive relief from the courts, by issuing fines, by terminating any common service paid for as a common expense, and by utilizing any other remedy authorized by law or the Governing Documents in order to maintain and operate the project and to enforce these rental restrictions. The Association shall be entitled to its attorney's fees and costs in any action to enforce the terms of this Amendment or its rules.

(2) Lease Payments by Tenant to Association. If an Owner who is renting his or her Unit fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board of Directors may demand that the tenant, and the tenant thereafter shall, pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until the amount due to the Association is paid in accordance with the procedures established by law, and such amounts shall be the personal obligation and debt of the tenant to the Association, jointly and severally with the Owner.

(3) Hardship Exemptions to Rental Prohibition. The Board shall have the sole discretion to allow rentals that would otherwise exceed the rental cap stated herein upon the showing of an undue hardship by the requesting owner. The Board shall state the terms and duration of the hardship exemption granted and cause the owner to sign an agreement to such terms. No hardship exemptions are guaranteed, nor may this Section be relied on by any owner that such an exemption will be granted.

**3.4 Trees, Shrubs, Bushes and Fences: Maintenance of Proper Sight Distance at Intersection and Prior Written Consent Required.** All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial shall be planted or placed by any Owner or resident in, on or about the Common Areas, or Limited Common Areas, without the prior written consent of the Board

of Directors. Approval, if any, of fencing in the front of a Unit shall be limited to a maximum of three (3) feet in height with the type and material to be approved by the Board of Directors. The Board of Directors may alter or remove any objects planted or placed in violation of this subsection after reasonable notice to the Owner.

### **3.5 Animals.**

3.5.1. The Board of Directors shall have the express authority and right to promulgate reasonable rules and regulations, beyond those stated herein, restricting the keeping of pets.

3.5.2. Subject to Section 3.5.1, no animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within or on any Unit, except no more than two (2) dogs and/or cats, or other common household pets, two or less in total number may be kept in or on a Lot/Unit, provided that they are not kept, bred, or maintained for any commercial purpose. The Owner of any animal permitted hereunder must keep such animal on a leash when outside of the Unit or keep it confined within the Unit.

3.5.3. Within the Limited Common Area of any 2-story Unit, if the Owner desires: (a) to keep a pet outside overnight or (b) keep a pet unleashed outside at any time, then in order to do so, the Owner of such Unit must first erect a fence enclosing the Limited Common Area for such Unit, and the Owner of such Unit must receive prior written consent from Board of Directors for the type, material and color of such fence before installing such fence.

3.5.4. Notwithstanding provision 3.5.3 above, no pet enclosures shall be erected, placed or permitted to remain on any portion of the Common areas, nor shall pets be kept tied to any structure outside the Unit. The keeping of pets and their ingress and egress to the Common areas shall be subject to such rules and regulations as may be issued by the Board of Directors. Pets must be on a leash at all times when outside the Unit.

3.5.5. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of their animal's waste from the Common Areas and Limited Common Areas.

3.5.6. A Pet Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given due to repeat violations of the rules and regulations governing pets within the Community. The Board of Directors may apply for appropriate judicial relief in the event that Pet Owners violate this Article.

3.5.7. This Section may be supplemented by Rules and Regulations as adopted by the Board of Directors.

**3.6 Offensive Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities 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 which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents.



**3.7 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.

**3.8 Rubbish and Trash.** No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

**3.9 Vehicles in Disrepair/Repair of Vehicles.**

3.9.1. All vehicles parked within the Project must have a current license plate and must be drivable and in good working order, with no fluid leaking from the vehicle. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board of Directors reasonably determines that its presence offends the occupants of the other Units.

3.9.2. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board of Directors may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

3.9.3. No resident shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

**3.10 Storage and Parking.** The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

3.10.1. Owners, residents, and long-term visitors (more than 14 days) shall be prohibited from parking in the visitor parking spaces in the Common Areas;

3.10.2. Except for purposes of loading or unloading passengers or supplies (for a period of time up to twelve (12) hours), no recreational, commercial or oversize vehicle parking is allowed in the Project;

3.10.3. No parking on any private road or any public road or alleys, except in designated parking spaces, is allowed at any time in the Project;

3.10.4. No parking within alleys, except for the sole purpose of loading or unloading passengers or item is allowed at any time in the Project;

3.10.5. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation vehicle or device of any kind may be parked or stationed in such manner so as to block access to any Lot, Building or parking space, or so as to create an obstacle or potentially dangerous condition;

3.10.6. Residents may only park their motor vehicles with their garages and on their respective driveway;

3.10.7. No garage may be altered in such a manner that the number of motor vehicles which may be reasonably be park therein after the alteration is less than the number of motor vehicles that could have been reasonably parking in the garage as originally designed and constructed;

3.10.8. All Visitor parking areas shall be used solely for Visitor's parking. No vehicle may be parked in Visitor parking areas for a period of time exceeding 48 consecutive hours;

3.10.9. Garage doors shall remain closed except when the garage is in use;

3.10.10. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas.

3.10.11. Vehicles parking in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner's sole expense.

3.10.12. The Board of Directors may adopt and amend rules to govern the parking of vehicles in the Common Areas, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

**3.11 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 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 Board of Directors. No sheds or outbuildings are permitted.

**3.12 Use of Common Area.** Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of the Common Areas, other than as permitted in this Declaration or as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Unit Owners in the Property and is necessary for the protection of interests of all said Owners in and to the Common Area.

**3.13 Signs.** No signs shall be erected or displayed on the Common Areas, except signs placed by authority of the Board of Directors. No signs shall be erected or displayed to be visible from the exterior of any Unit, with the limited exception that the Owner of a Unit may display one "For Sale" or "For Rent" sign in one window of such Owner's Unit, provided that the dimensions of such sign shall not exceed 18 inches by 24 inches in size.

**3.14 Antenna and Dish Policy.** Owners are encouraged to use cable service for television and internet when available. 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 and courtyard precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets and courtyard as possible. If installation is required on the roof, Owners must obtain architectural approval from the Board prior to installation and install according to board approved specifications, if any. Approval shall not be unreasonably withheld. Additional satellite dishes shall not be installed without prior written approval of the Board. 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 shall keep the dish in good repair so that it does not violate any portion of this Declaration. The terms “dish” and “antenna” are to be used interchangeably in the interpretation of the above policy.

Notwithstanding anything to the contrary, any satellite dish antenna larger than stated herein, and all other microwave dish antenna, satellite dish antennae, exterior radio antenna, exterior television antenna, or other exterior electronic signal receiving or transmitting equipment are prohibited with the Project.

**3.15 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. Owners shall refrain from excessive noise or traffic in, on or about any Lot or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m. Noise disturbances shall subject the Owner of the Unit from which the noise originates to a fine, as levied by the Board of Directors in its sole discretion.

**3.16 Increase in Insurance Cost.** Nothing shall be done or kept within any Unit or on the Common Areas, including Limited Common Areas, 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.

**3.17 Mailboxes.** No individual mailboxes shall be permitted anywhere on the Property. A multiple mailbox structure has been constructed for the use of the Owners.

**3.18 Smoking.** Smoking is prohibited on or within all Common Areas of the Property. This policy applies to all owners, tenants, guests, employees and service persons. Smoking shall include but may not be limited to, cigarettes, e-cigarettes, cigars, hookahs, or pipes. Smoking shall be permitted within the units and limited common areas so long as smoke or any residue produced by smoking does not drift into common areas, other units, or other limited common areas. Drifting smoke shall be considered a nuisance and enforceable as such hereunder.

**3.19 Nuisance.** No noxious or offensive activity shall be carried on, in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause a disturbance or annoyance to residents. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may

become unsafe or hazardous to any person or property. For purposes of this section a “nuisance” includes but is not limited to the following:

3.19.1. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or in the Common Areas;

3.19.2. The storage of any item, property or thing that will cause any Lot or the Common areas to appear to be in an unclean or untidy condition or that will be noxious to the senses. This shall be interpreted to include, but be limited to, the prevention of hanging of bikes and the hanging of clothes or linens from balconies;

3.19.3. The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

3.19.4. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other resident, their Guest or invitees, particularly if the police or sheriff must be contacted to restore order;

3.19.5. Maintaining any plants, animals, devices, items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents or their Guests;

3.19.6. Pursuit of hobbies or other activities, including but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions.

**3.20 Subdivision of a Lot.** No Lot shall be subdivided or partitioned.

**3.21 Firearms, Incendiary Devices and Graffiti.** The use of firearms and incendiary devices or the painting of graffiti within the Project is prohibited. The term firearms includes, but is not limited to, all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types regardless of size.

**3.22 Swamp Coolers or Evaporative Coolers.** No Owner shall place upon any part of the Project, Lot or Common Areas any swamp cooler or evaporative cooler.

**3.23 Plants.** No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon the Project.

**3.24 Outdoor Clothes Washing and Drying.** No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes or linens.

**3.25 Exterior Alteration.** No Owner shall make any alterations or modifications to the exterior of any Unit, or other building, fences, railings, or walls situation with the Project without the prior written consent of the Board of Directors, which consent shall be in the Board of Directors' sole discretion.

**3.26 Solar/Energy Conservation Equipment.** No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project.

**3.27 Association Rules and Regulations.** In addition to the restrictions and requirements above, the Board of Directors 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 in order to assure the peaceful and orderly use and enjoyment of the Property. 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 Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

#### **ARTICLE IV - ARCHITECTURAL CONTROL**

**4.1 Modifications.** No building, fence (except backyard boundary fencing consistent with the existing fencing established by the original developer), wall, Improvement or other structure, extension or expansion of the foregoing, shall be commenced, erected or maintained upon the Property, including any Unit, nor shall any exterior addition to the Property or any Unit, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. Such approval shall be solely at the discretion of the Board as they deem appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied.

**4.2 Design Guidelines.** Design and construction of Improvements shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (referred to as "Design Guidelines") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All builders and Owners shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted.

## **ARTICLE V - MAINTENANCE OBLIGATIONS**

**5.1 Operation, Maintenance and Alterations.** The Lots and Common Areas shall be maintained by the Owners and the Association as follows:

**5.2 Areas of Common Responsibility.** The maintenance, replacement and repair of the Common Area shall be the sole responsibility of the Association. The Association shall maintain, repair and replace, as needed from time to time, all roofs, foundations footings, columns, girders, beams and exterior walls and surfaces of all Buildings, the Common Areas, and certain Improvements constructed or installed thereon and in, on or about the Lots, including but not limited to all entrances to and exits from the Project, private streets and roadways within the Project, all park strips within the Project, open parking spaces, including without limitation the guest/pocket parking areas within the Project, street lighting, common sidewalks, water metering, heating, refrigeration and air conditioning systems (benefitting more than one Unit), underground main line water services, the private storm drainage system for the Project, including without limitation the storm drain inlets, storm water lines, underground storm water detention areas, detention basins for storm water drainage, and the drainage swales, the landscaped portions of the Common Areas identified on the Plat, curbs and gutters, pavement and central utility systems for power and light. The foregoing items are referred to as the "Area of Common Responsibility."

**5.3 Snow and Ice Accumulations.** The Association shall cause to be taken reasonable efforts to clear ice and snow accumulations from roads and streets within the Project and also from common walkways and the Common Areas. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning On November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas. Each Owner shall be responsible to clear ice and snow accumulations from all other locations surrounding such owner's Unit, including but not limited to all driveways and walkways (and steps) to the Unit's main entrance and on the sides and to the rear of the Unit, decks, patios and landings.

**5.4 Common Roads, Parking and Utilities.** Pursuant to 5.2 above, the Association shall maintain, replace and repair all private roads, common parking areas, if any, and all common utilities, conduits, ducts, plumbing and wiring and other common central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. Where, however, such utilities, conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service are associated with a single Lot or Unit, the Owner of such Unit shall be responsible for the maintenance, replacement and repair.

5.4.1 The Association shall arrange for the provision by appropriate utility providers of any utility services not separately metered and billed to the individual Owners by the provider.

The costs for all such utility services arranged by the Association shall be a Common Area Expense.

**5.5 Incidental Damages.** All incidental damages caused to private property by the maintenance, replacement and repairs of the Common Area and Facilities or utility services shall be repaired promptly, and the cost thereof charged as a Common Expense.

**5.6 Access Through Common Areas.** Because some of the Common Area and Facilities, and/or Limited Common Area are or may be located within private property or may be conveniently accessible only through such property, the Association shall have the irrevocable right to have access to each Lot or Unit and to all Common Area and Facilities, and/or Limited Common Area from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Area and Facilities, and/or Limited Common Area or for making any emergency repairs at any time and when necessary to prevent damage to the Common Area and Facilities or to any Lot or Unit.

**5.7 Access Through Lots or Units.** The Association shall also have the irrevocable right to have access to any Lot or Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

**5.8 Areas of Owner Responsibility.** Each Owner shall maintain, repair and replace all interior spaces and improvements constituting a part of such Owner's unit. The following items are expressly included in the Area of Owner responsibility: all interior walls and spaces of any Unit and its appurtenant garage, all individual utility services such as power, light, gas, hot and cold water, individual water metering, heating, refrigeration and air conditioning systems, fixtures, windows, doors, patios, balconies and decks, garage doors, and garage door systems. If an item is not included in the foregoing descript of Area of Common Responsibility and it is located within a Unit, then it shall be the responsibility of the Owner. The Board of Directors may, in its sole discretion, add items to our subtract items from the Areas of Owner Responsibility upon at least thirty (30) days prior written notice to the Owners.

5.8.1 Garbage/Recycle Removal. Each owner shall be responsible to remove all garbage, debris and refuse from his Lot and deposit it in an approved trash container. Trash and recycle containers shall be kept out of sight and inside the garage, except when the trash is collected within the Community. The Board may establish days and times when trash and recycle containers may be set out for trash and recycle collection.

5.8.2 Neglect. If the Board of Directors determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance,

repair, or replace of the Common areas is caused through the willful or negligent act of any Owner, his Family, guests or lessee, and it is not covered or paid for by insurance, in whole or in part, then the Association may, but is not obligated to provide such maintenance, repair or replacement at the Owner's sole cost and expense. Any costs incurred pursuant to this section shall be an individual assessment to the Owner and may be secured by a lien against the Owner's Lot if not paid.

5.8.3 Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at such Owner's costs and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair with ten (10) days and thereafter complete such replacement or repair in a prompt manner.

**5.9 Standard of Care/ General / Limited Common Area.** The Property shall be maintained in a usable, clean, functional, attractive and good condition consistent with Community Standards. Each Owner shall keep his Limited Common, as shown on the Plat Map or described in this Declaration, Area broom clean and free of debris. Each Owner is also responsible to maintain, repair and replace all physical improvements to his Limited Common Area, at his sole expense, and in accordance with minimum standards established or to be established by the ARC for uniformity of appearance and quality of construction.

**5.10 Standard of Care/Landscaping.** All landscaping in the project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction of the Project. Specific guidelines and restrictions on landscaping may be established by the Board of Directors from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced within six (6) months. All lawn areas shall be neatly mowed, and trees, shrubs and bushes shall be properly pruned and trimmed.

5.10.1 Landscaping Restrictions. Owners shall not modify the landscaping, green space, sod, plant and flower beds, sprinkling system, or drainage in, on or about the Common Areas without the prior written consent of the Board of Directors, except that Owners shall have the right to plant flowers in approved and planned flower beds.

**5.11 Alterations to the Common Areas.** No Owner or resident may make any structural alterations, modifications changes or improvements to the Common Areas, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior consent of the Board of Directors. No fencing is allowed without the prior written consent of the Board of Directors.



## ARTICLE VI – ASSESSMENTS

### 6.1 Covenant for Assessments.

(a) Each Owner, by acceptance of a deed hereafter conveying any Unit to it, 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:

- (1) Annual common assessments (the “Annual Assessment”) as provided below.
- (2) Special assessments (“Special Assessments”) as provided below.
- (3) Individual assessments (“Individual Assessments”) as provided below.

(b) No member may exempt itself from liability for Assessments by abandonment of any Unit owned by such member.

(c) No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or to perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with an order or directive of any municipal or other governmental authority. The obligation to pay Assessments shall be a separate and independent covenant on the part of each Owner.

### 6.2 Annual Budget and Assessment.

(a) Adoption of Budget. The Board shall prepare, or cause the preparation of, 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, and shall include a reserve fund line item in an amount the Board determines to be prudent based on the reserve analysis (as defined in Section 6.6.2). If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present the adopted budget to Owners at a meeting of the Owners.

(b) Determination of Annual Assessment.

(1) The Board shall fix the amount of the annual 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.

(2) The omission by the Board, 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.

(3) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

(4) Capital Improvements. Each annual budget shall include a line item of expected Capital Improvements for the year. So long as the line item in the annual Budget for such improvements will not be exceeded by more than ten percent (10%), the Capital Improvements may be authorized by the Board of Directors alone. Any Capital Improvements, the cost of which will exceed 10% above the budgeted line item must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

**6.3 Apportionment of Assessments.** Assessments shall be apportioned as follows:

(a) Annual and Special Assessments. All Units shall pay an equal share of the Annual Assessment and Special Assessments commencing upon the date the Units are made subject to this Declaration.

(b) Individual Assessments. Individual Assessments are limited to assessments against a Residential Unit and any Limited Common Area exclusive to the use of that Residential Unit. General Common Area shall not be the subject of an Individual Assessment. As applicable, Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable.

(c) Payment of Assessments. Installments of Annual Assessments shall be levied and collected on a monthly basis. However, upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

**6.4 Purpose of Assessments.** The Assessments levied by the Association shall be used for payment of Common Expenses and any other expense incurred by the Association, including, but not limited to: (a) the improvement and 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) for promoting the recreation, health, safety, and welfare of the residents of the Property; and (f) the cost of funding

all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below.

**6.5 Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time (“Special Assessment”) 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. The Board may authorize a Special Assessment for any lawful purpose provided, however, that 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 action exceed the votes cast opposing the action; and (2) a quorum of members representing at least 30% of the total Association voting rights cast a vote.

**6.6 Individual Assessments.** Any expenses which are not common expenses, and which benefit or are attributable to fewer than all of the Units, may be assessed exclusively against the Units affected or benefitted. Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Unit to reimburse the Association for costs incurred in bringing the Unit or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association; (2) Expenses, other than common expenses, relating to the cost of maintenance, repair replacement and reserves of the Units which may be incurred by the Association; (3) attorneys’ fees, interest, and other charges relating thereto as provided in this Declaration.

**6.7 Reinvestment Fee.** Upon the transfer of title to each Unit, a reinvestment fee, in an amount to be determined by the Board of Directors, shall be charged and payable to the Association. A separate Notice of Reinvestment Fee will be recorded providing additional notice. The parties to the transaction are responsible to negotiate who pays this fee. This fee shall not apply to the following transfers: (1) to the United States or the State of Utah or any agency, instrumentality, county, city, municipality, district or other political subdivision thereof; (2) to the Association or its successors; (3) to a trust that is for the benefit of the Transferor or the Transferor’s relations, so long as consideration for the transfer is no greater than ten (10%) percent of the value of the Lot transferred; (4) transfer or change on interest by reason of death, except for a sale of the property by the estate of an Owner; (5) transfer made by an Owner to a legal entity or trust owned or controlled by the Transferor; (6) transfer made solely for the purpose of correcting, modifying or supplementing a Transfer previously recorded; or (7) transfer in connection with the foreclosure of a deed of trust or mortgage, or a deed given in lieu of foreclosure.

**6.8 Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 10<sup>th</sup> of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

6.8.1 Interest. Delinquent payments shall bear interest from the eleventh (11<sup>th</sup>) day of the month (the “date of delinquency”) at the rate established by the Board of Directors, but in no

event greater than 18% per annum.

6.8.2 Late Charge. Delinquent payments shall be subject to a late charge not to exceed twenty-five dollars (\$25) or five percent (5%) of the installment, whichever is greater, the actual amount to be determined by the Board from time to time.

6.8.3 Acceleration. If paid by installments, assessments may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

6.8.4 Rent Payments by Tenant to Association. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

6.8.5 Remedies, Including Suspension of Membership Rights and Services. All membership rights, including the right of a member to vote, shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any assessment, fines or other fees charged by the Association. Pursuant to the policies of the Association, any service(s) provided by the Association to the Owner(s) shall also be terminated as to the delinquent Owner(s) for the period of time set forth in the Association's policies. The Association shall have the authority to exercise each and every remedy for collection of assessments, fines or fees provided for in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**6.9 Lien.** The Annual Assessment and all other Assessments imposed together with damages, fines, interest, costs of collection, late charges, and attorneys' 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 or charge is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. 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. 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 for his share of the unpaid assessments 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.

**6.10 Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with late charges and interest at a rate to be established by the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' 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 at the time when the assessment became due.

**6.11 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 appurtenant Limited Common Area, 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 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 by recording an "Appointment of Trustee" on 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.

**6.12 Enforcement of Lien.** The lien for nonpayment of assessments may be foreclosed by the Board judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, 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, 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, and 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. 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.

**6.13 Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Unit subject to assessment, except as follows: the sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure shall extinguish the lien of such assessments 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 thereafter becoming due.

**6.14 Reserve Analysis.**

6.14.1. Reserve Analysis Required. The Board 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. However, the Board may decrease the frequency of conducting and updating a reserve analysis in a formal

resolution of the Board delivered to all Owners. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

6.14.2. 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:

- (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
- (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
- (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
- (d) 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,
- (e) a reserve funding plan that recommends how the Association may fund the annual contribution described in subsection (d) above.

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

## **6.15 Reserve Funds.**

(a) Unless vetoed by the Owners pursuant to applicable law, the Association shall establish and maintain a reserve fund for the purpose of funding repair, replacement and restoration of the Common Areas and other items for which it is responsible to repair or replace, any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board, by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve funds shall be maintained separately from other Association funds.

(b) The Association may establish such other reserves for such other purposes as the Board may from time to time consider necessary or appropriate.

(c) The Board'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 Board members shall not be held liable for any potential or alleged under funding of the reserve account.

(d) Unless approved by a majority of Association members for daily maintenance purposes, reserve funds may not be used for any purpose other than the purpose for which the reserve fund was established.

**6.16 Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**6.17 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 has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge 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 a lot owner's sale of the owner's lot up the maximum amount allowed by law.

## **ARTICLE VII - THE ASSOCIATION**

### **7.1 Organization.**

(a) The Association has been or will be 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).

(b) In the event the Association is at any time administratively dissolved by the Division of Corporations and Commercial Code, the Board may re-incorporate the Association without a vote of the Owners.

(c) The affairs of the Association shall be governed by a Board of Directors as provided herein and in the Bylaws.

**7.2 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. The membership shall commence, exist and continue by simple 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.

**7.3 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 as set forth in the Bylaws.

**7.4 Powers, Duties and Obligations.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

7.4.1 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(1) The Association shall maintain the Common Areas.

(2) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(3) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(4) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, subject at all times to direction by the Board of Directors, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board of Directors.

7.4.2 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and any Bylaws, together with its general powers as a corporation, 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:

(1) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter into any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Unit or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Unit in violation of this Declaration.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or



threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(2) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Unit on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

A. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Officers may from time to time deem desirable;

B. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable.

(3) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Managing Agent can only execute any contract binding on the Association after receiving Board approval.

(4) Telecommunications/Fiber Optic/Related Contracts. The Board of Directors 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. The Board shall also have 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.

**7.5 Adoption of Bylaws.** The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration.

## **ARTICLE VIII – RULES, ENFORCEMENT, APPEAL**

### **8.1 Rules and Regulations.**

8.1.1. The Board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations, subject to limitation and requirements of the law, including the right of the Owners to disapprove a rule pursuant to law, and subject to the Board's duty to exercise business judgment on behalf of the Association and the Owners.

8.1.2. Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules and Regulations, the Board shall:

(a) at least 15 days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a change to the Rules and Regulations;

(b) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes action under Section 8.1.1; and,

(c) deliver to the Owners a copy of the change in the Rules and Regulations approved by the Board within fifteen (15) days after the date of the Board meeting.

8.1.3. The Board may adopt a rule without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, an Owner, an occupant of a Unit, a Unit, or a Townhome. The Board shall provide notice to the Owners of such a rule within fifteen (15) days of adoption by the Board.

**8.2 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.

**8.3 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board, 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:

**8.3.1** 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 Board of Directors 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;

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

**8.3.3** 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 Board from time to time. A subsequent occurrence of the same violation occurring within 12 months of a prior occurrence is and shall be deemed the same violation for all purposes and each such subsequent occurrence shall be subject to an immediate fine without further warning or notice;

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

**8.3.5** To suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation (which the suspension remains for so long as the violation remains); or

**8.3.6** 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 attorneys' 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.

**8.4 Fines.** The Board may assess a fine against an Owner for a violation of the Governing Documents in accordance with the following provisions.

8.4.1. Warning. A written warning ("Warning") shall be sent to the Owner of the lot. The Warning shall:

- (a) describe the violation,
- (b) state the rule or provision of the Governing Documents that the Owner has violated,
- (c) state that the Board may, in accordance with the provisions of the law, assess fines against the Owner and suspend membership rights if a continuing violation is not cured or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning or assesses a fine against the Owner,
- (d) if the violation is a continuous violation, state a time by which the Owner must cure the violation (which time must be at least 48 hours after the day the Owner is given the Warning), and
- (e) state the amount of the fine that will be assessed if a continuous violation is not cured within 48 hours or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning.

8.4.2. Initial Fine. The Board may assess a fine against an Owner if: (i) within one year after the day on which the Board gives the Owner a Warning, the Owner commits another violation of the same rule or provision identified in the Warning; or (ii) for a continuing violation, the Owner does not cure the violation within 48 hours after the day the Owner is given the Warning. Notice and Warnings may be given by electronic means, including but not limited to electronic mail and delivery shall be deemed complete when sent without a "send failure" notice.

8.4.3. Subsequent Fines for Same Violation. After a fine is assessed against an Owner, the Board may, without further warning, assess an additional fine against the Owner each time the Owner: (i) commits a violation of the same rule or provision within one year after the day on

which the Board assesses a fine for a violation of the same rule or provision; or (ii) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine.

8.4.4. Notice of Fine. Each time a fine is assessed, notice of the fine shall be sent to the Owner describing the violation, stating the rule or provision of the Governing Documents that the Owner has violated, and stating that the Owner may request an informal hearing before the Board to dispute the fine within 33 days after the date of the notice.

8.4.5. Membership Rights. An Owner shall not be deemed an Owner in Good Standing for 60 days after a fine is assessed against the Owner.

**8.5 Appeal by Owner.** Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Board to dispute the fine, penalty or suspension within 33 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures promulgated by resolution of the Board from time to time, or if none, in accordance with the standards determined by the Board at the hearing.

**8.6 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.

**8.7 Owner Complaints.** If an Owner alleges that another Owner is in violation of any nuisance provisions of the Association, Owner must first make contact with the offending Owner and request that such offensive activities cease. The Board will NOT review complaints between owners until two (2) attempts have been made to resolve the issue(s). However, if the complaint relates to a life, health or safety issues and contacting the alleged offending Owner/Tenant may reasonably cause the dispute to escalate, then the Owner shall contact appropriate municipal authorities and Owners may submit, without contacting the offending Owners, an Official Written Complaint Form with the Board. Such form can be obtained by contacting a member of the Board.

**8.8 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.

**8.9 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.

**8.10 Alternative Dispute Resolution.** Notwithstanding anything to the contrary contained here, in the event any dispute arises under the provisions of this Declaration (Owner claims

against the Association or Association claims against an Owner – “Claimant” and “Respondent,” or “Parties”), each Party shall give written notice to the other stating plainly and concisely:

- (i) The nature of the claim, including the persons involved and the party’s role in the claim;
- (ii) The legal basis of the claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) The Claimant’s proposed resolution or remedy; and
- (iv) The Claimant’s desire to meet with the other party to discuss in good faith ways to resolve the claim.

8.10.1 Exempted Claims. This Section for Alternative Dispute Resolution does not apply to any collection matter for Assessments or fines, for any violations of an Architectural Review Committee decision, or any other alleged violation that may affect the life, health or safety of a Member including protecting the Common Areas.

8.10.2 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by a good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the claim.

8.10.3 Mediation. If the Parties have not resolved the claim through negotiation within thirty (30) days of the date of the notice described herein (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the claim to mediation with an entity designated by the Association (if the Association is not a party to the claim) or to an independent agency providing dispute resolution services in the Salt Lake County, Utah area.

If the Claimant does not submit the claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such claim.

If the Parties do not settle the claim within thirty (30) days after submission of the matter to mediation or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date the mediation was terminated. The Claimant shall thereafter be entitled to file suit or initiate administrative proceedings on the claim, as appropriate.

Each party shall bear its own costs of the mediation, including attorney fees, and each Party shall share equally all fees charged by the mediator.

8.10.4 Settlement. Any settlement of the claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file a suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation attorney fees and court costs.

## **ARTICLE IX - INSURANCE**

**9.1 Types of Insurance Maintained by the Association.** The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, the following insurance, as well as such other insurance as it deems reasonable:

9.1.1 Casualty Insurance on Insurable Common Area. The Board shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of such portions of the Property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Board shall obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

9.1.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the Property damaged or destroyed, the Association may make a reconstruction assessment against all Unit Owners to cover the additional cost of repair against such Unit Owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the Project covered by insurance written in the name of the Association, the Board is empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

9.1.3 Liability Insurance. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common Areas for at least \$2,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. The Association shall obtain the appropriate liability insurance for the pool area.

9.1.4 Fidelity Insurance or Bond. The Board shall obtain and maintain fidelity coverage against dishonest acts on the part of managers, Board members, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or members. In procuring fidelity insurance, the Board shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months’ operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee”, and (4) provides that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days’ prior written notice to the Association and any insurance trustee. Any manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage not less than that required of the Association, which bond or insurance names the Association as an additional obligee.

9.1.5 Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a “B” or better general policyholder’s rating or a “6” or better financial performance index rating in Best’s Insurance Reports, an “A” or better general policyholder’s rating and a financial size category of “VIII” or better in Best’s Insurance Reports-international edition, a “BBBQ” qualified solvency ratio or a “BBB” or better claims-paying ability rating in Standard and Poor’s International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder’s ratings or one of the Standard and Poor’s claim-paying ratings mentioned above.

9.1.6 Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

3) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by the other community associations in the county.

4) Worker's Compensation and Employer's Liability Insurance. The Board shall acquire workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

5) Directors and Officers Liability. The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association from personal liability in the management of the Association's affairs.

6) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

**9.2 Annual Review of Policies.** All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Property which may be damaged or destroyed.

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

9.3.1 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.

9.3.2 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.

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

9.3.4 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.

9.3.5 Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of its Unit or Townhome, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the original construction;

9.3.6 If the Board determines that any Owner has failed to properly discharge its obligation with regard to the repair or reconstruction of the damaged structure, then the Association may, but is not obligated to, provide such repair or reconstruction at the Owner's sole cost and expense.

**9.4 Destruction, Condemnation and Obsolescence.** The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

9.4.1 Definitions. Each of the following terms shall have the meaning indicated.

a) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

b) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

c) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of a part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

d) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

e) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

f) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

g) "Restored Value" shall mean the fair market value of the Project after restoration as determined by a MAI or other qualified appraisal.

h) “Estimated Cost of Restoration” shall mean the estimated costs of restoring the Project to its former condition.

i) “Available Funds” shall mean any proceeds of insurance, condemnation awards, payment in lieu of condemnation, and any uncommitted funds of the Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

9.4.2 Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

9.4.3 Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make restoration is consented to by a vote of at least 67% of the Owners collectively and is further consented to by Eligible Mortgagees holding Mortgages on 51% of the Lots which are then subject to Mortgages held by Eligible Mortgagees.

9.4.4 Notice of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provision of this Declaration), take appropriate steps to determine the preferences of the Owners regarding restoration.

9.4.5 Excess Insurance. If the insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the capital improvement reserve account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and interested Mortgagee.

9.4.6 Inadequate Insurance. In the event the cost of restoration exceeds Available Funds, all of the Lots shall be assessed equally for the deficiency.

9.4.7 Sale of Project. Unless restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat shall terminate, and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners of all of the Lots equally. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and interested Mortgagee.

9.4.8 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interests may appear.

9.4.9 Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted, full power and authority to restore or to sell the Project and each Lot therein whenever restoration or sale, as the case may be, is undertaken as hereinabove provided.

9.4.10 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for restoration or sale, as the case may be.

## **ARTICLE X - AMENDMENT AND DURATION**

### **10.1 Amendments.**

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights of the Association. 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 or consent to the amendment

(b) Approval Required. This Declaration may be amended if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association.

(c) 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 is acknowledged and is recorded in the appropriate County Recorder's Office.

### **10.2 Duration.**

(a) Period. All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration after the vote and approval of seventy-five percent (75%) of all of the Owners of the Units.

(b) Execution and Recording of Termination Certificate. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying

that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

**11.1 Security.** The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association nor the Board of Directors shall in any way be considered insurers or guarantors of security within the Project, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, as well as their Guests, where applicable, acknowledge by taking occupancy of a Unit or entering the Project that neither the Association nor the Board of Directors represent or warrant that any security measures undertaken will insure their safety, and further acknowledge that neither the Association nor the Board of Directors are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither the Association nor the Board of Directors have made any representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty of merchantability.

**11.2 Rights Granted to the City.** The City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal within the Common areas, if the Association fails adequately to perform such. In the event the City exercises this right, the City shall be entitled to recover any associated costs and attorneys' fees. In addition the Owners within the Project, by virtue of purchasing a Unit within the Project, give the City the right, but not the duty to form, under State statutes, a Special Service District (SSD) for the purpose of ongoing maintenance or a Special Improvement District (SID) for the purpose of making needed improvements within the Project. The City may take his action when either asked to take over improvements or maintenance tasks by the Association, or by an Owner. The city council of the City may also take one or both of these actions when it determines the need based on a historical pattern of a lack of care and maintenance. The governing body of any such district formed, as stated in this Section, shall consist of the Draper City Major, City Council and the President of the Association of the Project. This Section shall not be amended or deleted without the approval of the City.

**11.3 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.

**11.4 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; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**11.5 Lessees and 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, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, 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.

**11.6 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 Board 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, Board or Owner as to any similar matter.

**11.7 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, 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 Board except where powers are expressly restricted.

**11.8 Premises Liability.** The Association and the Board is and shall remain wholly free and clear of any and all liability to, or claims by, all 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 an Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each 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.

**11.9 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, re-finance, rental, or lease of any Unit, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

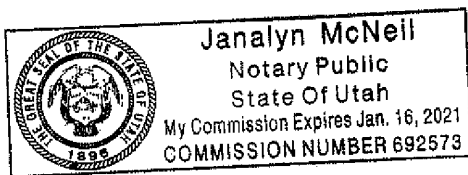
IN WITNESS WHEREOF, Galena Park Townhomes Owners Association, Inc. has executed this Declaration this 31 day of November, 2020.

GALENA PARK TOWNHOMES OWNERS ASSOCIATION, INC

*Reba L. Kiger-Kolasch*  
By: *Reba L. Kiger-Kolasch*  
Its: *President*

STATE OF UTAH            )  
  )ss:  
County of Salt Lake )

The foregoing instrument was acknowledged before me on this 21st day of November, 2020 by Reba L. Kiger-Kolasch.



*Janalyn McNeil*  
Notary Public for Utah

## **EXHIBIT A**

### LEGAL DESCRIPTION

All Units within Galena Park Townhomes, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

Including 78 Unit and 2 Areas:

Parcel Numbers 27253050010000 thru 27253050610000 and  
Parcel Numbers 27253300010000 thru 27253300200000

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**GALENA PARK TOWNHOMES**

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## ARTICLE 1 - DEFINITIONS

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

## ARTICLE 2 - MEETINGS OF ASSOCIATION

2.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time. If social conditions justify, annual meetings may be held through appropriate electronic means to allow participation by all homeowners in real time.

2.2 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Board.

2.3 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the President or two or a majority of the Board; or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by members in good standing holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the members, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

2.5 Voting. Each Lot shall have one (1) vote. Also see Section 2.7 regarding Fiduciaries and Joint Owners.

2.6 Proxies and Absentee Ballots. A vote may be cast in person, by proxy or by absentee ballot. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. A proxy may designate a specific representative entitled to vote. If no proxy representative list listed, the Board, by default, shall be deemed the proxy holder. A majority vote of the Board will

determine how such proxies are cast. If the Board's vote is tied, the President shall be the tie-breaker. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

## 2.7 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity.

(b) Joint Owners. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

## 2.8 Quorum of Owners.

(a) At any regular annual meeting of the Association, the members that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, members holding more than fifty percent (50%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

(b) The subsequent ratification of an Owner of the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting or vote of members cannot be organized because of a lack of quorum, the members who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and such members that are represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting or vote.

2.9 Binding Vote. Action on a matter other than the election of directors 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.

2.10 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 Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

2.11 Meeting Procedure. Rules of order may be adopted by resolution of the Board, 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.

2.12 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association causes to be delivered a written ballot to every member 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 directors; 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 Board 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 members and may be described as such in any document. The Board 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.

2.13 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of members 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 members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members 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 3 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE**

#### **3.1 Number, Term and Qualifications.**

(a) The affairs of the Association shall be governed by a Board of Directors composed of three (3) to five (5) Board members, which may be increased or decreased by Board vote. However, the current size of the Board shall be in effect until the next annual meeting, at which time the number of Board members, either increased or decreased, shall stand for election.

(b) Members of the Board shall serve for a term of three (3) years. The terms shall be staggered so all Board members are never elected in the same year. Unless a Board member forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Board of Directors until his successor qualifies and is properly elected by the Association.

Upon the adoption of this document, the Board shall have discretion to allocate the terms of the initial Board to ensure terms are staggered. Thereafter, terms shall be for three (3) years.

(c) All Board members must be an Owner or the spouse of an Owner of a Unit, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Unit, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Unit.

(d) A member must be in “good standing” with the Association to be eligible to serve on the Board meaning that all assessments, fines and fees must be current with the Association and the member must not have any current violations outstanding.

3.2 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by the remaining Board members. In the event the number of Board members falls below the minimum number of permitted Board members, by vote of a majority of the remaining Board members even though they may constitute less than a quorum, the Board may fully function at that number until the next annual meeting. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

#### **3.3 Removal of Board members.**

(a) At any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting

interests of the members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board may declare the office of a member of the Board to be vacant or abdicated in the event such member is absent from three (3) consecutive regular meetings of the Board or from more than 25% of the regular meetings held in any 12 month period, or, within 24 hours of a request to take action without a meeting, more than twice in any 6 month period fails to respond in writing by (1) voting for the action, (2) voting against the action, or (3) abstaining from voting and waiving the right to demand that action not be taken without a meeting. The vacancy shall be filled as provided in Section 3.2 above.

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

3.5 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting if all the Board members agree in writing to take a vote or an action without a meeting. The action being taken shall not require unanimous consent of the Board. Any action so taken shall have the same effect as though taken at a meeting of the Board members.

#### **ARTICLE 4 - NOMINATION AND ELECTION OF BOARD MEMBERS**

4.1 Nomination.

(a) Method of Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a Nominating Committee and/or nominations from the floor at a meeting. If one is established, the Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

Any prospective nominee names (and nominee descriptions, if desired) must be presented by the Nominating Committee to the Board PRIOR to the official Meeting Notice being sent to the membership. Nominee names must be included in the Notice. Nominations from the floor at the Meeting are also allowed.

(b) Nominating Committee. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board; and one or more members of the Association.

4.2 Election. At the election, the members or their 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. Cumulative voting is not permitted.

## **ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS**

### **5.1 Organizational Meeting.**

(a) **Location, Date and Time.** The first meeting of a newly-elected Board shall be held within fourteen (14) days of election at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

(b) **Procedure and Business.** Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 **Regular Meetings.** Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.3 **Special Meetings.** Special meetings of the Board shall be held when called by the president of the Association, or by a majority of the Board members, after not less than forty-eight (48) hours' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board: (a) Meetings of the Board shall be conducted by the President; (b) A decision of the Board may not be challenged because the appropriate rules of order were not used; (c) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

### **5.5 Open Meetings; Executive Sessions.**

5.5.1 **Open Meetings.** Except as provided in subsection 5.5.2, all meetings of the Board shall be open to Unit Owners or the Unit Owner's representative if the representative is designated in writing. At each meeting, the Board shall provide each Unit Owner a reasonable opportunity to offer comments. However, the Board may limit the comments to one specific time period during the meeting. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

At least 48 hours before a meeting, the Association shall give written notice of the meeting via email to each Unit Owner who requests notice of a meeting, unless (i) notice of the meeting is included in a meeting schedule previously provided to the Unit Owner; or (ii) the meeting is to address an emergency and each Board Member receives notice of the meeting less

than 48 hours before the meeting.

A notice of the Board meeting shall be delivered to the lot owner by email, to the email address that the Unit Owner provides to the Board in their request for notice of board meetings. The notice shall state the time, date and location of the meeting and information necessary to allow Unit Owner to participate by the means of electronic communication.

5.5.2 Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

- (a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, private, or privileged nature at the discretion of the Board.

5.5.3 Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board 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.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Waiver of Notice. Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board 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 Board members are present at any meeting of the Board, no notice to Board members shall be required and any business may be transacted at the meeting.

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, 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.

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 Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (i) to another Board member, or other person, who is present at the meeting; and (ii) authorizing the other Board 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 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD**

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to: (a) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; (b) in the Board's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Board member or officer shall discharge the Board 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 Board member or officer reasonably believes to be in the best interests of the Association. The Board 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 Board 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 Board 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 Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

## **ARTICLE 7 - OFFICERS AND THEIR DUTIES**

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, secretary and treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board 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 Board may, from time to time, determine.

(b) Qualifications. All officers shall be members of the Board. Any Board member may be an officer of the Association.

(c) Multiple Offices. A person may simultaneously hold more than one office.

(d) Special Appointments. The Board 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 Board may, from time to time, determine.

7.2 Election and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office at the pleasure of the Board of Directors. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and

discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

#### **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS**

Each officer and Board 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 Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

#### **ARTICLE 9 - RECORDS AND AUDITS**

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

##### **9.1 General Records**

(a) The Board and managing agent or manager, if any, shall keep records of the actions of the Board and managing agent or manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 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.

9.3 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all mortgagees of Units who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time, the Board, 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 and furnish copies thereof to the Owners and mortgagees of Units.

9.4 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.5 below, all records of the Association shall be reasonably available for examination by an Owner and any mortgagee of a Unit pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.3 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.5 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

#### **ARTICLE 10 - AMENDMENTS**

Except as otherwise provided by the Act or by the Articles of Incorporation these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the affirmative vote of the majority of the Board of Directors at a regular or special meeting of the Board attended by a quorum, if notice of the proposed alteration, repeal or adoption be contained in the notice of such meeting; provided however, that the Board of Directors shall not be permitted to amend the Bylaws contrary to the provisions of the Declaration or the Articles of Incorporation.

An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office. No action to challenge the validity of an adopted amendment may be brought more than two (2) years after the amendment is recorded.

#### **ARTICLE 11 - MISCELLANEOUS**

##### 11.1 Notices.

11.1.1 Association. All notices to the Association or the Board shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

### 11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. A member may require the Association, by written demand, to provide notice to the member by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Unit.

(c) If a Unit is jointly owned, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

(d) Whenever any notice is required to be given, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

11.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a member or by the Association.

11.3 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association 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 as to any similar matter.

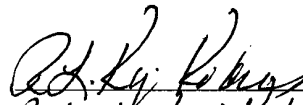
11.4 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and

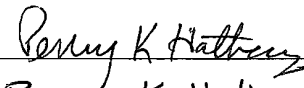
neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

11.5 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

11.6 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 officers on this 21 day of November, 2020.

(Sign):   
(Print Name): Rebekah Kijunkolasch, President

(Sign):   
(Print Name): Penny K. Hathaway, Secretary