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DECLARATION OF CONDOMINIUM  
FOR  
MARCAT CONDOMINIUMS  
(INCLUDING BYLAWS)

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This Declaration of Condominium for Marcat Condominiums (as the same may be amended from time to time, the "Declaration") is made on the date evidenced below by River Huck Development, LLC (hereafter "Declarant"), pursuant to the provisions of the Condominium Ownership Act, Utah Code Title 57, Chapter 8, as amended (the "Act").

## RECITALS

A. Declarant is the owner of certain land in Salt Lake County, Utah, shown on the condominium Plat entitled Marcat Condominiums Phase 1 recorded simultaneously herewith in the Recorder's Office of Salt Lake County, state of Utah, (the Recorder's Office) and more particularly described in **Exhibit A** (the "Property").

B. It is the intention of the Declarant to develop the Property subject to this Declaration as a condominium project pursuant to the Act and unto that end the Declarant adopts, imposes and subjects the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein for the following primary purposes: To provide for the benefit of the Owners, the preservation of the value and amenities in the Property, and the maintenance of the Common Areas and the buildings in the Property, and for the creation of a unit owners association delegated and assigned the powers of maintaining and administering the Common Areas and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges designated by this Declaration; which association shall be incorporated under the laws of the state of Utah as a nonprofit corporation for the purpose of exercising the functions mentioned herein.

C. The Property shall be known as Marcat Condominiums.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

### 1. DEFINITIONS

When capitalized in this Declaration, words have the meanings set forth in this article.

**1.1 "Act"** means the Utah Condominium Ownership Act, Utah Code, Title 57, Chapter 8, as amended or substituted from time to time.

**1.2 "Additional Land"** means the land more particularly described in Exhibit B that may be annexed to the Property and made subject to this Declaration thereby expanding the Property as set forth in Article 10.

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

**1.4 "Association"** means and refers to the Marcat Condominiums Owners Association, and any successor incorporated or unincorporated association of the Unit Owners acting under the authority of this Declaration, the Bylaws and the Act. The Management Committee acts in all instances on behalf of the Association, except when specifically stated otherwise in a Governing Document or the law.

**1.5 “Business Judgment”** means discharging of a Committee member’s or officer’s duties (1) in good faith, (2) with the care an ordinarily prudent homeowner association management committee member or officer would exercise under similar circumstances, and (3) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association.

**1.6 “Bylaws”** mean the Bylaws of the Association (initially attached as **Exhibit C**) as they may be amended from time to time.

**1.7 “Common Areas and Facilities”** or simply **“Common Area”** means: (1) the real property and interests, excluding all Units, which comprise the Property; (2) all Common Areas and facilities designated as such on the Plat; (3) all Limited Common Area; (4) all foundations, roofs, columns, girders, beams, supports and perimeter walls constituting a portion of or included in the improvements which comprise a part of the Property; (5) all installations for and all equipment connected with the furnishing of the Property’s utility services, such as electricity, gas, water and sewer, except as otherwise provided in this Declaration; (6) in general, all apparatus, installations and facilities included within the Property which exist for common use; (7) the Property’s outdoor lighting, fences, landscape, sidewalks, parking spaces, driveways and roads; and (8) all other parts of the Property normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

**1.8 “Common Expenses”** means expenses required by the Governing Documents or the Act to be assessed against all the Owners.

**1.9 “Declarant”** means River Huck Development, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property; or (b) transfer, set over and assign all of its right, title and interest under this Declaration.

**1.10 “Deliver” or “Send”** means to mail, send by electronic transmission, hand deliver or post on an Association website (including an Association social media account).

**1.11 “Development Period”** means the period that both: (1) Declarant owns a Unit or a portion of the Additional Land, and (2) that extends for seven years from the later of the recording of this Declaration or the recording of a Supplemental Declaration.

**1.12 “Governing Documents”** means a written instrument under which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including the Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations, all as may be amended from time to time.

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

**1.14 “Include,” “includes,” or “including”** means (regardless of capitalization), without limitation, that the items listed are not an exclusive list and do not limit the application of the

preceding word, unless the word “only” or similar language is used to expressly indicate that the list is an exclusive or limiting list.

**1.15 “Limited Common Area”** means all of the real property identified as limited common area on the Plat and includes: (1) roof decks, doorsteps, porches, balconies, patios, and other apparatus intended to serve a single Unit but located outside the boundaries of the Unit, and (2) any fixture, mechanical equipment, utility or service line or installation extending, as applicable, to the connection to a main line that services more than a single Unit. Limited Common Areas are Common Areas limited to the use of that Unit which is served by the Limited Common Area to the exclusion of other Units. The boundaries of Limited Common Areas are as shown on the Plat and otherwise the Limited Common Areas include the space up to, but not including, the surfaces of the walls, ceilings, floors, entrance ways, doorsteps, stoop, patio, deck, balcony and railings located on the respective Limited Common Area perimeter lines shown on the Plat.

**1.16 “Management Committee”** or, when capitalized, **“Committee”** means the Management Committee of the Association elected by the Owners to manage and operate the Property and the Association and to carry out this Declaration, the Bylaws and Rules and Regulations. The term Management Committee is synonymous and interchangeable with the term “Board” or “Board of Directors” as that term may be used in the Governing Documents or the Utah Revised Nonprofit Corporation Act.

**1.17 “Mortgage”** means any mortgage or deed of trust encumbering a Unit and any other security interest existing by virtue of any other form of security instrument or arrangement, if such mortgage, deed of trust or instrument evidencing the security arrangement, has been recorded with the county recorder.

**1.18 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.19 “Notice”** means notice as defined in the Bylaws.

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

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

**1.22 “Percentage Interest”** means the percentage of undivided ownership interest of each Unit Owner in the Common Areas as described in Section 2.4. The Percentage Interests are all equal and are 20% each, until the Property is expanded pursuant to the terms of this Declaration and the Percentage Interests are reallocated.

**1.23 “Period of Administrative Control”** means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove all members of the Management Committee, pursuant to Section 11.2 below, and is the time between the date of recordation of this Declaration and the first to occur of (1) expiration of six years, or (2) the conveyance of Units to which seventy-five percent of the Percentage Interests appertain.

**1.24 “Plat”** means the official condominium plat or plats for the Property recorded at the county recorder’s office, as may be amended or substituted from time to time, and including a recorded plat map describing property added to the Property subsequent to recording of this Declaration pursuant to the terms of this Declaration.

**1.25 “Property” or “Project”** means all of the real property and interests within the boundaries of the project described in the Plat, including all Units and Common Area.

**1.26 “Rules” or “Rules and Regulations”** means the written rules, regulations, resolutions, policies and procedures adopted by the Management Committee from time to time.

**1.27 “Supplemental Declaration”** means a supplement to or amendment of this Declaration executed by Declarant and which expands the Property to include additional Units by subjecting the area described therein to this Declaration and the Act pursuant to Article 10.

**1.28 “Turnover Meeting”** means the first meeting of the Association whereat the members of the Management Committee are elected by the Owners pursuant to this Declaration.

**1.29 “Unit”** means a separate part of the Property intended for any type of independent use, and which is or was created by the recording of a declaration and a condominium plat that describes the Unit boundaries. Each Unit includes the space enclosed and bounded by the horizontal and vertical planes shown on the Plat, and all interior partitions, fixtures and improvements within such boundaries are part of the Unit.

1.29.1. Walls, Floors and Ceilings. The vertical boundaries of a Unit are the interiors of the unfinished walls located on the perimeter lines of the Unit as shown on the Plat. The following are part of a Unit: all wallboard, drywall, plaster and lath; paneling; tiles; wallpaper; paint; carpeting, tile and other floor coverings; and all other material constituting part of the finished surfaces of walls, floors and ceilings.

1.29.2. Windows and Doors. The following in the perimeter walls of a Unit are part of the Unit: all windows and doors, including frames, thresholds and door jams.

1.29.3. Equipment. Mechanical equipment and appurtenances located within a Unit or forming part of the boundary of a Unit, and serving only that specific Unit (extending, as applicable, to the Unit boundary) are part of the Unit, such as appliances; electrical receptacles and outlets; air conditioning and cooling apparatus, fixtures and the like; pipes; valves; breaker boxes; wires; conduits; and utility or service lines or installations within a Unit.

1.29.4. Structural Features. Structural features and any other property of any kind, including fixtures and appliances, within any Unit are part of a Unit if they are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the structure or building within which the Unit is situated.

## **2. PROPERTY DESCRIPTION, RIGHTS AND EASEMENTS**

**2.1 Property Subject to the Act, Declaration and Bylaws.** Declarant hereby submits the Property, including all parts thereof, to the provisions of the Act. The Property shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and



obligations of all parties interested in or who use the Property are governed and controlled by, the Governing Documents, all agreements and determinations of the Association, and the Act, and to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, controls. This Declaration runs with the land and is binding upon each and every party which has at any time 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, and shall inure to the benefit of the Association and each Owner.

**2.2 Description of Buildings and Improvements.** The significant improvements within the Property consist of one building of wood frame construction, with brick, stucco, and metal siding, containing 5 residential Units, and other improvements as shown on the Plat.

**2.3 Description and Legal Status of Units.** The Plat (together with the definitions and provisions of this Declaration) shows the Common Areas, Limited Common Areas, Units and building designations, as well as their locations and dimensions from which their areas may be determined. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.4 Ownership Interest in Common Areas, Percentage Interests.** The percentages of undivided ownership interest of the Unit Owners in the Common Areas (Percentage Interests) are equal and are 20% each, until the Property is expanded pursuant to the terms of this Declaration and the Percentage Interests are reallocated. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Unit Owners according to their respective Percentage Interests. Neither the Percentage Interest nor the right of exclusive use of any Limited Common Area shall be separated from the Unit to which it appertains, and even though not specifically mentioned in the instrument of transfer, the percentage interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

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

**2.6 Use and Occupancy.** Except as otherwise provided in the Governing Documents from time to time, the Owner of a Unit shall be entitled to the exclusive use and benefits of ownership of such Unit. Each Unit and its Owner, occupants, guests and invitees, are bound by and shall comply with the Governing Documents for the mutual benefit of all Owners.

**2.7 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:

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

(2) Utility and Other Easements. The Association and any public or private utility provider shall have an easement through the Common Area for the installation, maintenance and development of utilities, as may be necessary. Each Unit Owner shall have an easement in common with all Owners to use all common pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving the Owner's Unit. The Association may make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Area) facilities for use by Owners generally or by the Association and its agents exclusively. The Committee may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. With respect to each Unit, an easement exists, (1) through the Unit for the benefit of the Common Area and all other Units, for support, repair and services to and of the Common Area and all other Units, and (2) for the repair of a Unit as reasonably necessary through all other Units and through the Common Areas.

(3) Common Areas; Delegation of Rights. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas which right and easement is subject to compliance by the Owner with the provisions of the Governing Documents and the right of the Association to limit the number of guests of residents. Except as to rights of ingress and egress to a Unit, any Owner not residing on the Property is deemed to have delegated the Owner's right of enjoyment and use of and to the Common Area facilities and amenities to any tenants, contract purchasers, or other occupants of the Unit who actually reside on the Property and no person other than residents and their guests (up to the number established by rule from time to time) may use any Common Area facility or amenity.

**2.8 Encroachment.** No Unit shall encroach upon an adjoining Unit or Common Area. However, it is acknowledged that the Plat is prepared from the architectural drawings of the Property and there may be variances between the boundaries and other features shown on the Plat and actual construction. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area or an adjoining Unit due to or caused by such variances, error in the original construction of any building or improvements, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by any repair or reconstruction of the Property in accordance with the provisions of this Declaration, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Unit. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist.

**2.9 No Right of First Refusal.** The right of an Owner to sell, transfer, or otherwise convey a Unit is not subject to any right of first refusal or similar restriction.

### **3. RESTRICTIONS ON USE**

#### **3.1 Animals.**

3.1.1. Two household pets may be kept in a Unit and no other animals of any kind may be kept in a Unit unless expressly permitted in writing by the Management Committee. A household pet means a dog, cat or other normally domesticated pet, as determined from time to time by the Committee.

3.1.2. Those animals which are permitted may not cause any noise or disturbance that would be deemed a nuisance to other occupants within the Property. Any inconvenience, damage or unpleasantness caused by an animal shall be fully and promptly remedied by the Unit Owner. Dogs must be kept on a leash or in a carrier when outside of a Unit. Owners shall be responsible for immediate removal of wastes of their animals from the Property.

3.1.3. Upon violation of this Section 3.1, or in the event the Association finds an animal is harassing or is a vicious animal, the Association may require any animal to be permanently or temporarily removed from the Property by its owner. Harassing means: (1) without provocation to chase any animal or person or approach any person in an apparent attitude of attack when such person is in a place where the person has a right to be, or (2) harassing by tearing, biting, or shaking with the teeth. A vicious animal is any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of, humans or other domestic animals; or which is known to have attacked or bitten any human or domestic animal at least once before. Additionally, the Association may prohibit a Unit occupant from keeping an animal as a result of noncompliance with this Section or any rules regarding animals. Each Owner of a Unit housing an animal shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such animal in the Property.

**3.2 Lease Restrictions.** All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a

default under the Lease. No Unit may be leased for an initial term of less than 30 days. No Unit may be used, in whole or in part, for transient lodging purposes, including as a boarding house, a bed and breakfast, or other uses for providing accommodations to travelers. Lease means regular, exclusive occupancy of a Unit by a person other than the Owner and for which the Owner receives a consideration or benefit, including a fee, service, gratuity, or emolument. Each occupant of a rental Unit must abide by the terms of the Governing Documents and each occupant of a rental Unit and the rental Unit Owner are jointly and severally liable for a violation of a provision of the Governing Documents, including for any fines levied and attorney fees, costs and any other expense incurred by the Association as a result of such violation. The Association may regulate, limit, or prohibit rentals of Units in a manner consistent with the purposes of the Project and the law. Prior to renting any Unit, the Unit Owner and the tenant shall execute a written lease agreement which shall include the following provisions: (1) The tenant shall agree to comply with all of the terms and conditions of the condominium Declaration and Bylaws; (2) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the premises; and (3) The Owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with the Declaration and Bylaws and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Association shall be entitled to exercise all of the Owner's rights and remedies under the lease agreement to do so. Prior to a tenant's occupancy of a Unit, the Owner must provide to the Association the name, address and telephone number of the tenant and a copy of the written lease agreement. The Association may enforce compliance with the Declaration and Bylaws against any Owner and/or occupant of any Unit, and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third party beneficiary under any lease agreement, to enforce such compliance.

**3.3 Vehicles; Parking.** Parking of the following is prohibited within the Community, except within a garage. Beyond, but consistent with this section 3.3, the Rules may restrict and regulate parking and vehicles within the Property and govern the enforcement of parking and vehicle restrictions. Vehicles in violation of the Governing Documents may be booted or towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, booting, towing or storing of a vehicle pursuant to the Governing Documents.

**3.4 Exposed Items; Signs; Window Coverings.**

3.4.1. Signs Attachments. Unless written approval is first obtained from the Management Committee, no awning, hanging, exterior attachment, advertisement, sign, flag, banner or poster of any kind may be posted in or upon the Properties, except the following may be displayed to the public view within a Unit without such pre-approval: (1) not more than one "for sale" sign, not exceeding 17" by 22," (2) professional security system signs, (3) the display of the U.S. flag or the flag of the state of Utah inside a Unit or Limited Common Area if the flag is made from fabric or cloth not exceeding three feet by five feet and the care of the flag and display is consistent with federal law, and (4) other signs or items expressly allowed by the Rules.

3.4.2. Clothes and Materials. No clothing or other fabric may be hung out unless screened from view from any other Unit, Common Area or the public. The Rules may regulate how equipment, storage, or other items and materials may be exposed to view from or within a Unit, Limited Common Area or Common Area.

3.4.3. Window Coverings. The appearance from outside a building of draperies, blinds, shades and other interior window coverings may be regulated by Rules. No tinted windows are permitted. Aluminum foil, newspapers, reflective film coatings, or any other similar materials may not be used to cover the windows in any unit. All windows and window panes must be harmonious and comparable in size, design and quality to the other Units

### **3.5 Modifications to Unit or Common Area.**

3.5.1. Interior and Exterior Changes. No interior work or changes to a Unit for which a building permit is required by a local authority may be performed unless (1) the building permit is first obtained and a copy provided to the Association, and (2) written approval of the Management Committee for the changes or work is first obtained. No Unit exterior or building exterior work or changes whatsoever may be commenced or made without the prior written approval of the Committee. No structural changes to a Unit, and no work whatsoever within Common Area (including plumbing and electrical work), may be commenced or made without the prior written approval of the Committee. Interior structural changes include changes that may impair the structural integrity or mechanical systems of the building or any Unit, may reduce the support or integrity of Common Area, or may compromise any structural components. The Rules may require that other changes or work must also be approved by the Committee.

3.5.2. Subdivision or Combination of Units. No Unit may be subdivided. No partition may be altered or removed, or aperture created, between adjoining Units.

**3.6 Residential Use.** Units may be used for residential purposes only. No trade, craft, business, profession, commercial or similar activity may be conducted in a Unit, unless: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door to door solicitation within the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Committee. Notwithstanding the above, the leasing of a Unit shall not be considered a business activity within the meaning of this section.

**3.7 Offensive or Unlawful Activities, Nuisances.** No nuisance may be created or maintained in the Property. The term "nuisance" includes the following: (1) any unclean, unhealthy, unsightly, or unkempt condition; (2) the storage or keeping of any thing or actions or activities that cause any part of the Property to appear to be in an unclean or untidy condition or that is noxious to the senses, that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents or cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents; and (3) too much noise or traffic in, on or about any Unit or

the Common Area, especially after 10:00 pm and before 8:00 am. No unlawful use shall be made of any part of the Property, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Nothing shall be done or kept within the Property which will increase the cost of insurance to the Association or to other Owners or which will result in cancellation of insurance on any Unit or Common Area.

**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. All rubbish, trash, refuse, waste, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein.

**3.9 Antenna/Dish Policy.**

3.9.1. Owners are encouraged to use cable service for television and Internet. Satellite antennas, such as direct broadcast satellite antennas (a.k.a. satellite 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 only to the extent and in locations allowed in the Governing Documents. All other antennas are prohibited.

3.9.2. Antennas may only be installed inside the Owner's Unit or upon the Owner's Limited Common Area. No Owner may install an antenna in or on the Common Area, including on the exterior or roof of any building or on the railing of any porch, patio or balcony. No antenna may extend beyond balcony railings. Owners need to be aware that their Unit may not be in a proper location to receive satellite broadcast signals even if they install an antenna. Prior to installation, Owners should check with a qualified and reputable company to determine if they are able to receive adequate signals at their unit. Owners shall notify the Committee in writing prior to any installation. Such notice shall include a description of the location for the antenna and the installation (attachment) method. No Owner may drill holes in walls, doors, railings or window frames in order to install the antenna or run cable from the antenna to the television and may not otherwise alter, modify or penetrate Common Area. All installations must be performed in such a manner as not to cause legitimate safety concerns, including danger of falling, danger of permanent damage to the building or proximity to power lines.

3.9.3. Owners are responsible for any injury or damage to persons or property caused by their antenna. All installations must be performed in complete compliance with all applicable statutes, rules and regulations. If permits are required, the Owner will obtain all such permits prior to installation. These rules are meant to comply with 47 CFR § 1.4000, as may be amended from time to time. All requirements of such section are hereby incorporated herein. In the event any portion of this section is held to conflict with applicable law, those portions shall be deemed stricken and all other portions of this installation policy will remain in full force and effect.

3.9.4. The Management Committee may waive a provision of the installation policy in this Section, but any such waiver will be effective only when in writing and only if the Owner receiving the benefit of any such waiver is able to produce it upon request of the Committee.

**3.10 Project Air Space, Unmanned Aircraft.** The Rules may regulate or ban the use of the airspace over the Property (all airspace up to public airspace), including the use of any flying device. With or without such Rules, in no event is the Association liable for damage to a person or property relating to the operation of such a device. Any person causing a flying device to be flown within the airspace over the Property shall: (1) be responsible for any damage caused by the device and (2) indemnify and defend the Association and its agents from any claims related to the device.

**3.11 Rules.** In addition to the restrictions and requirements above, the Management Committee from time to time may adopt such Rules governing the conduct of persons anywhere in the Property and the management, maintenance, aesthetics and use of the Units and Common Areas, including Limited Common Areas, and the operation of the Association, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property and the accomplishment of the purposes of the Association and the Property.

## **4. MAINTENANCE OBLIGATIONS**

### **4.1 Owner's Responsibility.**

4.1.1. Unit. Maintenance of a Unit is the sole responsibility of the Owner, who shall maintain such Unit in good repair and in a clean and sanitary condition, all so as to not interfere in any way with the use, enjoyment or value of other Units or the Common Areas, and so as to not detract from the appearance, value or use of the Property.

4.1.2. Walls, Ceilings, Floors, Windows, Doors. Each Unit Owner is responsible at the Owner's sole expense to maintain, repair and replace: (1) the interior surfaces of the following forming the boundaries of the Unit: walls, ceilings, floors (including all wallboard, plasterboard, plaster, lath, furring, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting the finished surfaces of walls, ceilings and floors); and (2) all walls, ceilings, floors and doors within the Unit; and (3) all windows and doors (and all parts thereof) forming part of the vertical boundaries of the Unit, including interior and exterior surfaces thresholds, frames, door jams and hardware.

4.1.3. Utility Facilities Servicing Only Unit. Each Unit Owner is responsible for the maintenance, repair and replacement of the following if servicing only the Unit: any utility facilities, plumbing fixtures, water heaters, heating equipment, air conditioners and air cooling units of any type, sewer and drainage pipes, water and other utility lines (all between the boundary of the respective Unit and the point where the same joins the utility line serving other Units), lighting fixtures and bulbs (except exterior building mounted lights and walkway lights which are not located within patios and balconies), wiring, receptacles, switches, fireplaces, or other appliances or fixtures.

4.1.4. Limited Common Area. Except as otherwise provided in this Subsection 4.1.4 or in Section 4.2, each Unit Owner shall, at the Owner's own cost, maintain, repair and replace the Limited Common Area appurtenant to the Unit, including any balcony and all materials above or upon a balcony support structure, and its railings and posts, and including the rooftop deck and railings and all parts thereof, and shall keep the same in a clean, sanitary and attractive condition

at all times. The Association shall maintain, repair and replace the roof of the building and all parts of the roof, except any rooftop deck and rooftop railings.

#### **4.2 Maintenance by Association.**

4.2.1. The Association shall maintain, repair and replace (1) the Common Areas, and (2) the roofs as provided in Subsection 4.1.4. The Management Committee shall determine, in its sole discretion, the appropriate maintenance and improvement of the Common Areas and any other area or item for which the Association is responsible.

4.2.2. The Association may, but shall not be obligated to, take such action as necessary if, in the opinion of the Committee, an Owner is unwilling or unable to adequately provide the maintenance required by this Declaration, or in order to remedy any condition which is in violation of a Governing Document, and may assume all or part of an Owner's maintenance responsibility. Before assuming such maintenance responsibility, the Committee shall provide notice to the Owner of its intention to do so in the manner provided in Section 2.7(1) of this Declaration, and if such Owner has not commenced and diligently pursued remedial action within the time period stated in the notice, the Association may proceed to carry out such maintenance or action. Any expenses incurred by the Association under this Subsection 4.2.2 shall be an Individual Assessment against the Unit. If any part of the Property is damaged by the willful or negligent act of an Owner, its guests, tenants, or invitees, the Owner is responsible for all such damage, and the Association may elect whether (1) to repair the damage, in which case, the cost to repair such shall be an Individual Assessment against that Owner and that Owner's Unit, or (2) to require the Unit Owner to repair such damage according to any reasonable terms specified by the Association.

**4.3 Further Clarification of Responsibilities.** To the extent not clarified in this Declaration, the Association may, by duly adopted resolution of the Management Committee, identify and assign those areas of maintenance and responsibility that are either Owner responsibilities or Association responsibilities. Such a resolution shall not be inconsistent with the provisions of this Declaration and need not be recorded with the county recorder, except such a resolution may be inconsistent with the provisions of this Declaration if the resolution: (1) merely reflects an established pattern of practice which has been in effect and undisputed by any Owner or the Association for five or more years, (2) is approved by unanimous vote of the Management Committee, and (3) is recorded with the county recorder. Any such resolution shall be distributed to all Owners at the time of adoption and shall be binding against all Owners and the Association.

**4.4 Damage to a Unit from Common Area.** The Association shall repair damage to the physical structure of a Unit or Limited Common Area, including any fixture, improvement, or betterment permanently part of or affixed to a Unit or Limited Common Area (but not including any personal property within a Unit or Limited Common Area) incurred: (1) in the course of maintenance, repair or replacement performed by the Association, or (2) as a result of a failure of an element for which the Association is responsible to maintain, repair and replace, or an instance where such an element is overwhelmed, (such as water damage). However, beyond such damage, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or



flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the negligent or intentional act of the Association. Nothing in this subsection shall relieve or alter any obligation of the Association's insurance carrier under any insurance policy.

## **5. ASSESSMENTS**

**5.1 Covenant for Assessments.** Each Owner, by acceptance of a deed conveying any Unit to it, whether or not so expressed in the conveyance, is deemed to have covenanted and agreed to pay Assessments to the Association, as provided for in this Declaration.

### **5.2 Annual Budget and Annual Assessment.**

5.2.1. Adoption of Budget. The Committee shall prepare, or cause the preparation of, and adopt a budget for the Association annually, which shall provide, without limitation, for the administration, management and operation of the Association, including fulfilling its duties under this Declaration, and, after the Period of Administrative Control, shall include a reserve fund line item in an amount the Committee determines to be prudent based on the reserve analysis (as defined in Section 5.7.2). If the Committee fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### 5.2.2. Determination of Annual Assessment.

(a) Amount, Notice. The Committee shall establish, and send notice to all Owners of, the amount of the annual assessment ("Annual Assessment") at least 20 days before the start of the fiscal year.

(b) Approval for Increases of More Than 25%. After the Period of Administrative Control, the Annual Assessment may not be increased by more than a total of 25% in any twelve month period unless such increase is first voted upon by the Owners and: (1) a quorum of Owners holding at least 30% of the Percentage Interests cast a vote, and (2) the votes cast favoring the increase exceed the votes cast opposing the increase.

(c) Equitable Changes. If the Annual Assessment is, or will become, inadequate to meet the expenses incurred by the Association during a fiscal year for any reason, the Committee may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes an equitable change in the amount of the Annual Assessment (subject to subsection (b) above). At least twenty days before the first due date under such budget, the Committee shall give the Owners written notice of any such change.

(d) Omission to Fix Not a Waiver. The omission by the Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of this article or a release of any Owner 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.

**5.3 Apportionment of Assessments.** All Units shall pay a pro rata share of Annual Assessments and Special Assessments based upon the Percentage Interests of Units, subject to the exemption specified in Section 11.3. Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable as provided for below.

**5.4 Purpose of Assessments.** The Assessments levied by the Association shall be used to fulfill the purposes of the Association and carry out the provisions of this Declaration, including, but not limited to: (1) The improvement, maintenance, operation, care, and services related to the Common Areas and other areas for which the Association is responsible; (2) The costs of utilities and other services which may be provided by the Association for the Property; (3) The cost of labor, equipment, insurance, materials, management, legal and other professional and administrative fees incurred or expended in performing the duties under the Governing Documents or law; (4) The cost of funding reserves for the Association; and (5) Any item properly chargeable as a common expense of the Association.

**5.5 Special Assessments.** In addition to Annual Assessments, 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 reasonably be paid for through other types of Assessments, as determined by the Management Committee. The Committee may authorize a Special Assessment, except that any Special Assessment of more than \$500 per Unit or levied within 12 months of a prior Special Assessment may only be levied if it is first voted upon by the Owners and: (1) a quorum of Owners holding at least 30% of the Percentage Interests cast a vote, and (2) the votes cast favoring the Special Assessment exceed the votes cast opposing it.

**5.6 Individual Assessments.** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted ("Individual Assessments"), except expenses required in the Governing Documents or by law to be a Common Expense. Individual Assessments include but are not limited to Assessments levied against any Unit to reimburse the Association for costs or attorney fees incurred in bringing the Unit or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents; expenses incurred by the Association under Subsection 4.2.2 above; an amount assessable to a Unit Owner under Article 8 "Insurance"; and fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents.

**5.7 Reserve Analysis.** After the Period of Administrative Control, this Section 5.7 shall apply.

5.7.1. Reserve Analysis Required. The Management Committee shall cause a Reserve Analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three years. However, the Committee may increase or decrease the frequency of conducting and updating a Reserve Analysis in a formal resolution of the Committee delivered to all Owners. The Committee may conduct a Reserve Analysis itself or may engage a reliable person or organization, as determined by the Committee, to conduct the Reserve Analysis.

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

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

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

**5.8 Reserve Fund.** After the Period of Administrative Control, this Section 5.8 shall apply. The Association shall establish and maintain a reserve fund for the purpose of (1) maintenance, repair, replacement or restoration of any property or items for which it is responsible, (2) any emergency, unforeseen, unusual, unanticipated or irregularly occurring expenditure, and (3) for any other purpose determined from time to time by the Management Committee. The Committee may not use money in a reserve fund for daily maintenance expenses, unless the Owners holding a majority of the Percentage Interests approve the use of reserve fund money for that purpose. Daily means performed or occurring more often than monthly. The Committee’s reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds, and except in such instances, individual Committee members shall not be held liable for any potential or alleged under-funding of the reserve account.

**5.9 Nonpayment of Assessments.** Unless otherwise provided by resolution of the Management Committee, the Annual Assessments are due on a monthly basis on the first calendar day of each month and are delinquent if not paid within fifteen (15) days after the due date or such other date established by the Committee (the “date of delinquency”). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

5.9.1. Interest, Late Charge, Collection. A delinquent Assessment bears interest at the rate of 18% per annum or such other lower rate established by the Committee from time to time, and is subject to a late charge in the amount determined by the Committee from time to time. All costs (and not merely costs limited under the Utah Rules of Civil Procedure and not as may be

otherwise limited) and attorney fees incurred by the Association in collecting an Assessment are part of the Assessment against the Owner and the Unit.

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

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

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

5.9.5. Other Remedies, Including Suspension of Membership Rights. All Association membership rights, including the right of an Owner to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Management Committee. A Committee member or officer shall become immediately ineligible to serve on the Committee or as an officer and shall be automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act and in Utah Code Title 12, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by the Act in order to exercise any such remedy. A collection fee may be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, as amended or substituted from time to time.

**5.10 Lien.** An Assessment is a charge and continuing lien upon a Unit against which the Assessment is made and shall be construed as a real covenant running with the land and includes damages, interest, all costs of collection, late fees, and attorney fees provided for in the

Governing Documents or by law or awarded by a court. The recording of this Declaration constitutes record notice and perfection of such lien. 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.

**5.11 Enforcement of Lien.** The lien may be foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8-45 to the attorney of the Association, with power of sale, each Unit for the purpose of securing payment of assessments under the terms of the Declaration. The Association, through duly authorized agents, shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, rent, mortgage and convey the same, notwithstanding anything else to the contrary in this Declaration. 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.

**5.12 Appointment of Trustee.** The Declarant, the Association and each Owner hereby appoint the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8, Utah Code Ann., as may be amended from time to time.

**5.13 Subordination of Lien to Mortgages.** The lien provided for in this Article has priority over each other lien and encumbrance on a Unit except a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Unit. The sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Unit from liability or lien for any Assessments or charges thereafter becoming due, and shall not relieve any Owner of the personal obligation for such amounts. Any first Mortgagee who obtains title to a Unit pursuant to the remedies in the mortgage other than foreclosure shall not be liable for more than six months of Assessments or charges accrued before acquisition of the title to the Unit by the Mortgagee, but not including fees or costs related to the collection of the unpaid Assessments, for which the Mortgagee shall be liable.

**5.14 Personal Obligation and Costs of Collection.** Assessments, together with interest, late fees, and all costs and attorney fees incurred in the collection thereof (whether or not a lawsuit is initiated), are the personal obligation of an Owner holding title to a Unit at the time when the Assessment became due, and, regardless of the terms of any agreement to the contrary, the liability of the Owners of a Unit for the payment of such amounts shall be joint and several, and any remedy for the collection of such amounts may be enforced against any or all Owners of the Unit concerned. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally

liable with the grantor for all unpaid assessments against the grantor for the grantor's share of 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.

**5.15 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 Management Committee to take some action or perform some function required to be taken or performed by the Association or Committee under Governing Documents, 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 each Owner. No Owner may exempt itself from liability for Assessments by abandonment of a Unit.

**5.16 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon request and payment of the amount allowed by law, provide an Owner a writing signed by an officer of the Association setting forth whether Assessments have been paid, and which shall be conclusive evidence of payment of such amounts. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a sale of the Owner's Unit up to the maximum amount allowed by law.

**5.17 Application of Payments.** Payments shall be applied first to costs and attorney fees, then to the charges (regardless of type) on an Owner's account in the order of their coming due.

## **6. THE ASSOCIATION**

**6.1 Organization.** 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). In the event the Association is at any time administratively dissolved by the state of Utah, the Management Committee may re-incorporate the Association without a vote of the Owners. The Management Committee governs the affairs of the Association as provided in the Governing Documents and acts in all instances on behalf of the Association except as to matters specifically requiring approval by the Owners in the Governing Documents or the law.

**6.2 Membership.** Each Owner during the entire period of Owner's ownership of a Unit shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**6.3 Voting Rights.** The method of voting is provided in the Bylaws and an Owner has a vote in matters of the Association for each Unit owned equal to the Percentage Interest appertaining to such Unit.

**6.4 Powers, Duties and Obligations.** The Association has all the powers set forth in its Governing Documents, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers,

and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. The Association has the exclusive authority and right to provide for the management, use, maintenance, repair, operation or administration of the Property as a whole, including the Common Area. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

6.4.1. In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Property or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association and the Committee shall have the power and authority to do the following: (1) 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, (2) to defend, bring, prosecute, and settle litigation for itself and the Property, (3) to obtain, contract and pay for, or to otherwise provide for such utility services as the Committee may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Committee may deem desirable, (4) to delegate by resolution or contract to a managing agent any of its powers under this Declaration, (5) to repair or restore the Property following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation and the Association, as the attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of any part of the Common Area (the award in any condemnation proceeding, the proceeds of any settlement related thereto, and the proceeds of any insurance on the Common Areas shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear), (6) to grant non-exclusive easements and rights-of-way over the Common Area and to approve signage for the Project, and (7) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a majority of the Percentage Interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

6.4.2. Provision of Services and Facilities. The Association may provide services and facilities for the Units, Owners, their guests, lessees and invitees. A facility is space designated, or equipment built and installed, to serve a specific function. The Association shall be authorized to enter into contracts or other similar agreements with other entities, to provide such services and facilities, including contracts with telecommunication service providers and facilities owners pursuant to which the provider serves as the exclusive or nonexclusive provider of telecommunication services and/or facilities to each Unit, as well as the power to enter into, on behalf of the Association, similar bulk rate service contracts of any nature deemed in the Association's best interests. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control, telecommunication service, security service or facilities, fire protection facilities, caretaker, utilities, and similar services and facilities. The Management Committee may modify, cancel or remove existing services or facilities, if any, or provide or establish additional services and facilities, except that after the Period of Declarant Control, in order to cancel or remove any existing service or facility

or to provide or establish an additional service or facility, the prior approval of the Owners shall be obtained by a vote where a quorum of Owners holding at least 30% of the Percentage Interests cast a vote and the votes cast in favor of the proposal exceed the votes cast against. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, shall be provided by the Association.

6.4.3. Electronic Cars and Charging Stations. The Association may allow, regulate, and impose responsibility for any costs associated with the installation of charging stations and the charging of electric vehicles on the Property.

## 7. COMPLIANCE, ENFORCEMENT, APPEAL

**7.1 Compliance.** All Unit Owners and occupants and any other person who in any manner uses the Property are subject to and shall comply with the provisions of the Governing Documents, the Act, and any other applicable law. Such a person failing to so comply is subject to any penalties described in the Governing Documents, including fines and an action brought by the Association or an aggrieved Owner.

**7.2 Remedies.** The voting rights of an Owner more than 60 days' delinquent in the payment of Assessments are automatically suspended until the account is brought current, unless otherwise determined by the Management Committee. Violation of any provisions of the Governing Documents (including failure to timely pay an assessment) or of any decision of the Association made pursuant to such documents, shall give the Committee acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in the Governing Documents, or under law, to do any or all of the following after giving notice:

- (1) subject to the provisions of this Declaration, to enter the Unit as to which such violation exists and to summarily abate and remove or otherwise bring into compliance, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to such provisions, and the Committee shall not thereby be deemed guilty of any manner of trespass;
- (2) enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;
- (3) levy fines according to Section 7.3 below;
- (4) suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected, and to suspend the voting rights of an Owner, but not for longer than 60 days unless the violation is ongoing; and
- (5) bring suit or action against the Owner on behalf of the Association and other Owners to enforce the Governing Documents. The Association shall be entitled to an award of its attorney fees and costs in any action taken for the purpose of enforcing or otherwise carrying out 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.



**7.3 Fines.** The Association may assess a fine against an Owner for a violation of the Governing Documents in accordance with this Section 7.3.

7.3.1. Proof. The Management Committee may take the actions it deems necessary to investigate and verify any alleged violation. When the Committee determines after fair review and acting in good faith and without conflict of interest that it is more likely than not that a violation occurred, the violation shall be deemed to have occurred. In other words, when the greater weight of evidence (i.e., the evidence that is more convincing or likely to be true or accurate) indicates a violation occurred rather than didn't occur, the violation shall be deemed to have occurred. Any question of veracity of a witness or evidence shall be determined by the Committee and shall be final and conclusively binding upon all parties. If the Committee determines a violation has occurred, the Committee may proceed with enforcement in the manner it deems fit in its reasonable judgment.

7.3.2. Warning. If a violation occurs, a written warning ("Warning") shall be sent to the Owner of the Unit before a fine may be levied. The Warning shall:

- (1) describe the violation;
- (2) state the rule or provision of the Governing Document that the Owner has violated;
- (3) state that the Management Committee 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 Committee gives the Owner the Warning or assesses a fine against the Owner;
- (4) if the violation is an ongoing, 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
- (5) state the amount of the fine that will be assessed if an ongoing, continuous violation is not cured within 48 hours or if the Owner commits similar violations within one year after the day on which the Committee gives the Owner the Warning.

7.3.3. Initial Fine. The Management Committee may assess a fine against an Owner if: (1) within one year after the day on which the Committee gives the Owner a Warning, the Owner commits another violation of the same rule or provision identified in the Warning; or (2) for an ongoing, continuous violation, the Owner does not cure the violation within 48 hours after the day the Owner is given the Warning.

7.3.4. Subsequent Fines for Same Violation. After a fine is assessed against an Owner, the Committee may, without further warning, assess an additional fine against the Owner each time the Owner: (1) commits a violation of the same rule or provision within one year after the day on which the Committee assesses a fine for a violation of the same rule or provision; or (2) allows a violation to continue for 10 days or longer after the day on which the Committee assesses the fine.

7.3.5. 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 Management Committee to dispute the fine within 33 days after the date of the notice.

7.3.6. Fine Amounts. A violation of any express rule, regulation, covenant, restriction or provision of any of the Governing Documents shall be subject to a fine in the amount set forth in a schedule of fines adopted by Rule from time to time, or in the absence of such a schedule, \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$75 per ten days for a continuous violation.

**7.4 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 Management Committee 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 Committee from time to time, or if none, in accordance with the standards determined by the Committee at the hearing.

**7.5 Action by an Owner.** Subject to any limitation imposed under this Declaration, the Bylaws, or Utah law, an aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy a thing or condition by appropriate legal proceedings. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of the Governing Documents shall be entitled to an award of its attorney fees and costs.

**7.6 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. In such an action, the violation of any covenants, restrictions or requirements in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**7.7 Purchase Subject to Violations.** A buyer takes ownership of a Unit subject to any violation of the Governing Documents which may exist concerning the Unit, whether or not such violation was disclosed by the seller of the Unit and whether or not the Association knew of the violation at the time of sale. Such buyer is liable for correcting such violations upon demand by the Association.

**7.8 Notification of First Mortgagee.** The Management Committee shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Unit Owner which is not cured within sixty days provided such Mortgagee has requested in writing to be so notified.

## 8. INSURANCE

### 8.1 Insurance Maintained by the Association.

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

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

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

8.1.2. Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Management Committee, employees, and all others who are responsible for handling funds of the Association, regardless of whether a volunteer, and including any managing agent. Such fidelity coverage shall: (1) name the Association as an obligee; (2) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Units plus reserves; (3) contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's managing agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; and (4) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to the Association or any insurance trustee.

8.1.3. Flood Insurance. If any portion of the Property is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program, the Association shall be required to obtain and pay the premiums upon a "master" or "blanket" policy of flood insurance on the buildings and any other

property covered by the required form of policy in an amount deemed appropriate by the Association but not less than the lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (2) 100% of current replacement cost of all such buildings and other insurable property within such area.

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

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

8.1.6. Loss Not Exceeding Deductible. If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the policy deductible of the Association and until the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (1) for a Unit to which a loss occurs, the Unit Owner's policy is considered the policy for primary coverage for the damage to that Unit; (2) the Association shall pay for any loss for any Common Areas for which a loss occurs; (3) an Owner of a Unit who does not have a policy to cover the damage to the Unit is responsible for that Unit damage, and the Association may, as provided herein, recover any payments the Association makes to remediate that Unit, and (4) the Association need not tender the claim to the Association's insurer.

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

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

8.1.9. The Association, or insurance trustee if any, shall hold any proceeds of insurance in trust for Unit Owners and their first mortgage holders as their interests may appear. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least ten days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members.

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

**8.3 Unit Owner Insurance Responsibility.**

**8.3.1. Master Policy Deductible.**

(a) For covered losses to Lots and Limited Common Area, the Association's policy is primary but the Unit Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Unit, a dwelling on the Unit, or the Limited Common Area appurtenant to the Unit) as follows:

- (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 and the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.
- (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 the Unit Owner for that amount.

(b) The amount of the deductible under the Association's policy shall be determined by the Management Committee from time to time. The Association shall provide notice to the Unit Owners of the amount of the deductible and of any change in that amount.

**8.3.2. Contents of Unit.** The Association's policy does not cover the contents of a Unit or an Owner's personal property. Each Unit Owner is strongly encouraged to obtain insurance coverage for contents of the Owner's Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above.

**8.3.3. Acceptable Contractors.** No work on any part of the Property, including Lots and Units, shall be performed for repair or replacement due to a covered loss except by a licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

**8.4 Loss Due to Fault of Another.** This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property or liability insurance policy obtained by the Association: (1) waives the insurer's right to subrogation under the policy against any person residing with the Unit Owner, if the Unit Owner resides in the Unit, and the Unit Owner, and (2) the insurance is

not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.

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

## 9. MORTGAGEE RIGHTS

**9.1 Approval Required.** In addition to any other approvals required by this Declaration or the Bylaws, the prior approval of at least 51% of the first Mortgagee who have made written request to the Association to receive any of the notices described in this Article ("Eligible Holders") (based upon one vote for each Mortgage owned) must be obtained for the following:

9.1.1. Any material amendment to this Declaration or the Bylaws. Except for an amendment to the Declaration or Bylaw if its purpose is clarification or to correct technical errors, a change to a provision of the Declaration or Bylaws regarding the following would be considered as material: (1) voting rights; (2) funding of reserves for maintenance, repair, and replacement of the Common Areas; (3) general responsibility for maintenance and repairs (excluding minor changes); (4) redefinition of any Unit boundaries; (5) convertibility of Units into Common Area or vice versa; (6) expansion or contraction of the Property, or the addition, annexation, or withdrawal of property from the Property; (7) insurance or fidelity bond; (8) restoration or repair of the Property (after a hazard damage or partial condemnation); (9) action to terminate the legal status of the Property after substantial destruction or condemnation occurs or for other reasons; (10) assessments, assessment liens, or subordination of such liens; (11) rights to use of Common Areas; (12) the interest in the general or Limited Common Area; (13) leasing of Units; (14) any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey the Unit; (15) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; or

9.1.2. Use of hazard insurance proceeds for losses to any Project property for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute.

**9.2 Request for Approval of Mortgagees.** If an Eligible Holder's consent is a condition for amending the Declaration or Bylaws, then the Eligible Holder's consent is presumed if: (1) written notice of the proposed amendment or action is sent by certified or registered mail, return receipt requested, to the Eligible Holder's address provided to the Association by such Eligible

Holder; (2) 60 days have passed after the day on which notice was mailed; and (3) the person designated for receipt of the response in the notice has not received a written response from the Eligible Holder either consenting to or refusing to accept the amendment or action.

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

## **10. EXPANSION OF PROPERTY**

**10.1 Discretion to Expand Community.** Declarant reserves the right at its sole discretion and pursuant to Section 57-8-13.6 of the Act to develop the Property in phases and to expand the Property to include Additional Land by unilateral action of the Declarant without the consent of the Owners for a period of seven (7) years from the date of recording this Declaration in the office of the Salt Lake County Recorder, state of Utah (the "Option to Expand"). The real property subject to the Option to Expand consists of the Additional Land, as more particularly described in Exhibit B.

**10.2 Exercise of the Option to Expand; Process.** The Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by Declarant. No assurance is made with regard to which portions of the Additional Land, if any, will be added to the Property or the order in which such portions will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land. There are no limitations as to which portions of the Additional Land may be added. Expansion shall occur by the Declarant recording: (1) an additional plat creating an additional phase for Units on Additional Land; and (2) a supplemental declaration which shall state the Declarant's intention to have the area described therein subject to this Declaration and the Act and which shall reallocate the Percentage Interests to take into account the additional Units so that each of the total number of Units have an equal Percentage Interest (a "Supplemental Declaration"). Upon the recording of such a Supplemental Declaration, the property described therein shall be subject in all respects to this Declaration and the Act. The Declarant may adopt and record such a Supplemental Declaration without the consent or approval of any Unit Owner or other person.

**10.3 No Restrictions.** Declarant shall not be restricted in the location of improvements on the Additional Land or in the number of Units that may be created on the Additional Land, except as

may be required by applicable zoning requirements, provided the maximum number of Units that may be created on the Additional Land is 5 Units. The maximum number of Units per acre shall not exceed 10 Units.

**10.4 Uses of Additional Land.** The Units to be located on Additional Land shall be subject to the same use restrictions as provided in this Declaration and will be restricted exclusively to residential purposes.

**10.5 Units Created.** The Units to be built on the Additional Land need not be substantially similar to, but shall be compatible with, the initial Units in quality of construction, principal materials to be used and architectural style. The Units and any buildings to be built on the Additional Land may be substantially different in design, layout and building type. Improvements other than buildings containing Units may be erected on the Additional Land. Additional improvements may or may not include recreational facilities, parking areas, walkways and landscaping of the Common Area, and Declarant makes no assurances regarding such other improvements. Declarant reserves the right to add additional Limited Common Area to the Additional Land without limitation.

## **11. DECLARANT RIGHTS AND CONTROL**

**11.1 Conflicts.** If any other provision of this Declaration or of the Bylaws conflicts with a provision of this Article, the provision in this Article controls.

**11.2 Administrative Control of Association.** Declarant shall assume full administrative control of the Association through a Declarant-appointed Management Committee, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held no later than upon expiration of the Period of Administrative Control. If the Association or Management Committee is not in existence or does not have officers at the time of the creation of the Project, the Declarant shall, until there is an Association or Management Committee, have the power and responsibility to act in all instances where the Act or this Declaration requires action by the Association, the Management Committee, or any of the officers.

**11.3 Declarant Assessment Exemption; Subsidy.** Notwithstanding anything in this Declaration to the contrary, the Declarant and any Builder designated by Declarant in writing as exempt pursuant to this section, shall be exempt from the payment of any Assessment whatsoever, for any Unit owned by such Builder or by Declarant that: (1) is intended, as depicted in the Plat, to be fully or partially contained in a building, and (2) is not constructed and has not received a certificate of occupancy; provided that during the Period of Administrative Control, Declarant shall subsidize the Association for the amount by which the reasonable Association expenses and the maintenance of reasonable reserves for the maintenance and replacement of Common Area exceeds the total amount of Assessments levied against Units. The subsidy required of Declarant under this paragraph may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this paragraph at such times as the Committee may reasonably request from time to time (but shall not be required to make such



payments or contributions more often than monthly). At the end of each fiscal year of the Association, either: (1) Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this paragraph for such fiscal year; or (2) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this paragraph.

**11.4 No Actions Adverse to Developmental Rights.** The Association, the Management Committee, and any Owner may not take any action or adopt any rule or regulation that interferes with or diminishes any right reserved to Declarant pursuant to this Declaration without Declarant's prior written consent, and any such action shall automatically be null and void and have no force or effect.

**11.5 Easements Reserved to Declarant.** The following are reserved to Declarant and its successors and assigns:

(1) Non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage and utility easements, sewer easements, drainage and sewage easements, and open space, or otherwise designated as an easement area over any part of the Property.

(2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property, including the Units, including the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Unit, or in the area or on the area in which the same is located.

(3) The right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(4) An easement throughout the Property until the later of seven years from the recording of (1) this Declaration or (2) a Supplemental Declaration adding some any Additional Land to the Property, in order to allow Declarant to complete all improvements contemplated by the Declaration and the Plat, including improvements to the Additional Land.

#### **11.6 Other Rights.**

11.6.1. Sales Office and Model. As long as Declarant owns at least one Unit, Declarant shall have the right to maintain and relocate from time to time sales offices, management offices, signs advertising the Property, and models in any of the Units which it owns, controls or leases

or on the Common Areas, all as Declarant shall determine in its discretion. Declarant shall have the right to show Units and the Common Areas to prospective purchasers and to arrange for the use of any parking, storage, or recreational facilities within the Common Areas and other portions of the Property by prospective purchasers.

11.6.2. Amendments. During the Development Period, (1) the approval of the Declarant shall be required in order to amend the Declaration or Bylaws, and (2) the Declarant may unilaterally amend the Declaration, Bylaws or Plat without the consent of any Unit Owner

11.6.3. Common Area Changes. During the Development Period, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such maintenance, repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant. Additionally, during the Period of Administrative Control, the Declarant may make changes of any nature whatsoever to the Common Area in its sole discretion and without the consent of any other person or entity, including any Owner or the Association.

11.6.4. Architectural Restrictions. No provision of this Declaration restricting or requiring approval for construction or Improvements shall apply to Declarant's building or construction activities during the building and development of the Project.

11.6.5. The Act. The Declarant, the Declarant-appointed Management Committee and the Association are exempt from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant.

**11.7 Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Project, may be assigned without the consent of any Owner.

## **12. AMENDMENT AND DURATION**

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

**12.2 How Proposed.** Except for amendments adopted by Declarant pursuant to Section 11.6.2, and after the Period of Administrative Control, amendments to the Declaration shall be proposed to the membership by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners in Good Standing holding twenty percent (20%) or more of the Percentage Interests. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which the amendment is to be voted on or included with any request for approval of, or consent to, the amendment.

**12.3 Approval Required.** This Declaration may be amended: (1) as provided in Section 11.6.2, or (2) subject to Section 11.6.2, if such amendment is approved by Owners holding sixty-five percent (65%) of the Percentage Interests held by Owners in Good Standing, subject to the approval of Eligible Holders as may be required in Article 9 "Mortgagee Rights." Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Management Committee without approval of the Owners if an amendment is necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

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

### **13. MISCELLANEOUS PROVISIONS**

**13.1 Priority of Governing Document.** In the event of any conflict between the Governing Document, the document in the highest priority beginning with the first document listed prevails over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations. In the event of any conflict between provisions or documents consisting of the Rules and Regulations: (1) the later adopted provision or document prevails, or (2) if conflicting provisions are adopted on the same date or the adopted dates are not evident, the conflicting provisions have no force or effect until the Committee determines which provision or document prevails by duly adopted Committee resolution given to all Owners.

**13.2 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in the Governing Documents shall be resolved by the Management Committee, and its decision shall be final, binding and conclusive on all parties affected for all purposes. Words and phrases used in the Governing Documents are to be construed according to the context and the ordinary usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined herein, are to be construed according to such peculiar and appropriate meaning or definition. Local zoning or other ordinances or statutes may define certain words or phrases which are used herein and such definitions, unless otherwise required by law, are not authoritative or binding unless the Committee specifically determines, as to a particular word or phrase, that such definition applies, and such determination shall be final and conclusive as to 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 Property and the Association and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Committee except where powers are expressly restricted. The Committee may from time to time issue written policies, procedures and resolutions interpreting and implementing the provisions of a Governing Document, including, by way of example and not limitation, policies, procedures and resolutions that interpret or clarify any provision deemed vague or ambiguous by the Committee.

**13.3 Recovery of Costs and Attorney Fees.** Costs and attorney fees incurred for enforcement of the Governing Documents, regardless of whether any lawsuit or other action is commenced, are recoverable by the Association from the person enforced against. If the Association requests compliance with a Governing Document from an Owner and the Owner fails to comply or demonstrates intent not to comply, the attorney fees and costs incurred shall be an Assessment against the Owner and the Owner's Unit. Additionally, a prevailing party shall be entitled to its attorney fees and costs in any dispute concerning a Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit, before or after judgment, in any appeal, in any bankruptcy or receivership proceeding, or in connection with any alternative dispute resolution proceeding.

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

**13.5 Lessees and Other Invitees.** No damage to or waste of the Property shall be committed by any Owner or Unit occupant, guest, invitee or lessee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. 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 of the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**13.6 Waiver, Precedent, Estoppel, Change of Circumstances.** No restriction, condition, obligation or provision contained in a Governing Document shall be deemed to have been abrogated, waived or abandoned by the Association, the Management Committee or an Owner, irrespective of the number or scope of violations or breaches thereof which may occur, and any failure to enforce the same shall not be deemed to constitute precedent, abandonment, waiver, or estoppel impairing the right of the Association, Committee or Owner as to any similar matter. The existence of any number of violations of a covenant, restriction or Rule shall in no event give rise to a conclusion that the restriction has been abandoned and no covenant, restriction or rule shall be deemed to be abandoned, regardless of the number, frequency or scope of any violations of such covenant, unless and until the Governing Documents are duly amended to remove or alter such covenant, restriction or rule. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**13.7 Association Liability; Duties.** Declarant and the Association 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 Declarant and the Association 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 Areas 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. Nothing contained in this Declaration shall be construed so as to impose any liability upon Declarant or the Association for personal injuries or property damages to guests, invitees, trespassers, or other third parties arising out of the Declarant's or Association's failure to perform any duty or obligation imposed upon Declarant or the Association by this Declaration. Nothing contained in this Declaration shall be construed so as to impose any contractual liability upon Declarant or the Association for failing to take any of the following actions, except to the extent funds shall be available and the action shall be deemed necessary and appropriate by Declarant or the Association: (1) maintain the Common Areas; or (2) take any corrective or enforcement action, including an action against any Owner for non-compliance with any provision in the Governing Documents or any federal, state or local statute or regulation. Nothing contained in this Declaration shall be construed so as to impose any duty upon Declarant or the Association to inspect the Common Areas, Limited Common Areas or Units for dangerous, unsafe or unsanitary conditions or compliance with the Governing Documents or any municipal, county, state or federal law, regulation or order.

**13.8 Environmental Issues.** Each Owner understands and acknowledges that the buildings, Limited Common Areas and Common Areas have been constructed on natural soil and that Declarant has taken steps to construct the buildings, Limited Common Areas and Common Areas in accordance with engineering requirements based on soil reports provided to Declarant. Each Owner understands and acknowledges that (1) due to the nature of natural soil; movement, shifting, and cracking may occur in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings, etc., and (2) Declarant shall not be responsible for remedial efforts or costs related thereto necessary to remedy, repair or replace damage caused by the movement, shifting, and cracking in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings. Each Owner further understands and acknowledges that mold is a type of fungus that occurs naturally in the environment and is spread by means of microscopic spores in the air. Residential home construction is not, and cannot be designed to exclude mold spores from a home or Unit. Mold spores may enter a Unit through open doorways, windows, and air conditioning systems. Spores in the air also attach themselves to people and animals. Although the vast majority of mold spores are not known to cause health problems, some molds have the potential to cause health effects to individuals whose susceptibility is affected by existing sensitivities to allergies, underlying lung disease, and suppressed immune systems. Since mold spores exist everywhere naturally in the environment, mold cannot be prevented or removed entirely. Owners must take positive steps to eliminate excessive moisture in the Unit through: (1) regular vacuuming and cleaning; (2) reducing humidity in the home by adequate venting; (3) promptly repairing water leaks; (4) regularly maintaining the Units; and (5) performing routine visual inspections for mold growth and signs of leaks, moisture or water damage. The Declarant shall not be liable for any actual or special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to strict liability, breach of express or implied

warranty, negligence or any other legal theory, with respect to the presence and/or existence of molds, mildew and/or microscopic spores at the Project or any Unit. For purposes of this section, the term "Declarant" shall include, but not be limited to Declarant and its owners, managers, members, representatives, agents or employees.

**13.9 Changes in Price, Size, Design or View Impairment.** Declarant has made no promises, representations or assurances to any Owner regarding the pricing, size, design or configuration of any Unit and each Owner acknowledges that as market conditions or other facts change, such matters may be subject to change, including reduction in prices of Units and changes in size, design or product type. Each Owner further acknowledges that Declarant has made no representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a Unit and that views from a Unit may change or be obstructed by construction, placement of other structures or landscaping. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property described herein to require the development of said Property in accordance with such plat. Declarant expressly reserves unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof. For purposes of this section, the term "Declarant" shall include, but not be limited to Declarant and its owners, managers, members, representatives, agents or employees.


**13.10 Invalidity; Number; Captions; Recitals.** 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 includes 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. The recitals to this Declaration are incorporated herein and made a part of this Declaration.

**13.11 Notice of Purchase or Lease.** Immediately upon the purchase or lease of any Unit, the Owner shall promptly inform the Management Committee or manager of the name and address of the Owner or lessee. The Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it and the address of each Owner shall be deemed for all purposes to be the address of the Unit owned by such Owner unless the Committee is otherwise advised in writing.

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


IN WITNESS WHEREOF, the Declarant has executed this Declaration this 14<sup>th</sup> day of APRIL, 2021.

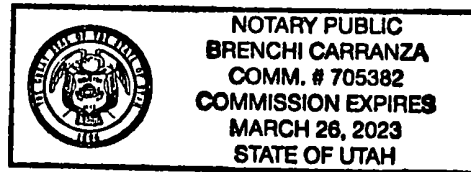
**RIVER HUCK DEVELOPMENT, LLC**

Sign:   
Print: MARC NORMAN  
Title: PRESIDENT

STATE OF UTAH                    )  
  ss:  
County of SALT LAKE )

Subscribed and sworn to before me on this 14 day of APRIL, 2021 by  
MARC NORMAN

  
Notary Public



## **EXHIBIT A**

### **(LEGAL DESCRIPTION)**

Units 1 - 5, MARCAT CONDOMINIUMS PHASE 1, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel #:



## **EXHIBIT B**

### **ADDITIONAL LAND**

NOTE: The following description of land that may be added to the condominium project, which is known as Additional Land, is included pursuant to Utah Code Section 57-8-10(4)(a).

HOWEVER, this Declaration is not to be recorded against or considered an encumbrance upon such Additional Land unless and until such Additional Land, or any part of it, is made subject to this Declaration by a separately recorded supplemental declaration pursuant to Article 10 of this Declaration.

#### **Legal Description**

A Parcel of land located in Lots 1 and 8, Block 18, Plat "A", Salt Lake City Survey located in the Northeast Quarter of Section 7, Township 1 South, Range 1 East, Salt Lake Base and Meridian more particularly described as follows:  
Beginning at a point on the west right-of-way line of 300 East Street, said point being South 0°02'04" East 231.15 feet along the west right-of-way line from the Northeast Corner of said Lot 8 and running;  
thence South 0°02'04" East 52.09 feet along the said west right-of-way line;  
thence South 89°57'20" West 165.00 feet;  
thence North 0°02'04" West 52.09 feet;  
thence North 89°57'20" East 165.00 feet to the point of beginning.

Parcel contains 8,594 sq. ft. 0.197 acres.

**EXHIBIT C**

**BYLAWS**

**OF**

**MARCAT CONDOMINIUMS OWNERS ASSOCIATION**

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## 1. DEFINITIONS

The definitions adopted by the Declaration are applicable to these Bylaws. In addition, a "Member," when capitalized, means an Owner. "Director" means a member of the Management Committee.

## 2. NOTICE, ELECTRONIC MEANS, HOA REGISTRY

### 2.1 Notice.

2.1.1. Association. All notices to the Association or the Management Committee 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 Committee may designate from time to time.

### 2.1.2. Owners.

(a) Notice by Electronic Means. In any circumstance where notice or any other document is required to be provided to the Owners or an Owner, the Association may provide the notice or document by electronic means, including text message, email, or an Association website, if the Committee deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Committee may promulgate Rules and procedures facilitating the implementation of this section from time to time, including a requirement that Owners furnish the Association with a current email address.

(b) Sufficient Notice. Any written notice provided by the Association to an Owner shall be deemed effective and received by the Owner when it is sent. "Sent" means mailed, emailed, or hand delivered. "Mailed" means deposited in the US mail, properly addressed, first-class postage prepaid, whether delivery is proved or not. Notice must be properly addressed to such physical or electronic address as given in writing by the Owner to the Committee or if no address has been so given, then to the Owner's Unit or to an email address from which the Association has received email correspondence from the Owner. If a Unit is jointly owned, a notice or other document sent to only one of the foregoing physical or electronic addresses is sufficient. If three successive written notices given to an Owner have been returned as undeliverable, further notices to that Owner are not necessary but are deemed effective and received in any event until another address of the Owner is made known to the Association.

**2.2 Conducting Business, 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 Owner if the Committee does so in good faith and has no reason to believe it is not the act of the Owner. 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 an Owner or by the Association.

**2.3 Utah HOA Registry.** The Association shall register with the Utah Department of Commerce in the manner established by the department and in compliance with the Act (the "Homeowner Associations Registry," currently at <https://secure.utah.gov/hoa>), including by providing (1) the name and address of the Association, (2) the name, address, telephone number, and, if applicable, email address of the president of the Association, (3) the name and address of a property manager or of each Management Committee member, and (4) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of an Owner's financing, refinancing, or sale of the Owner's Unit. The Association shall update such information with the Registry within 90 days after a change in any of the information.

### **3. ASSOCIATION: MEETINGS, VOTING, QUORUM**

**3.1 Annual Meetings.** The Association shall hold an annual meeting of Members each year on the day and at a time and place within the state of Utah stated in the notice of such meeting.

**3.2 Special Meetings.** The Association, by and through the Management Committee, shall notice, hold and conduct a special meeting of its Members: (1) on call of the Committee, or (2) if the Association receives one or more written demands for the meeting that state the purpose for which the meeting is to be held and are signed and dated by Owners in Good Standing holding at least 25% of the Percentage Interests. When a special meeting is requested by the Owners, the Committee shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the request and if notice of the meeting is not given by the Committee within 30 days after the date the written request is received by a Committee member, a person signing the request 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.

**3.3 Notice of Meetings.** Written notice of each meeting of the Association Members shall be given by the Association in a fair and reasonable manner and shall be given to each Owner in Good Standing, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance to provide fair and reasonable notice of the meeting, as determined by the Committee. Notice is 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.

**3.4 Member List.** The Association shall have no obligation under Utah Code Section 16-6a-710 to prepare or make available a list of the names of its Members in connection with a meeting or action by written ballot.

**3.5 Voting.** Each Unit is allocated such vote in the affairs of the Association equal to the Percentage Interest appertaining to the Unit.

**3.6 Proxies and Absentee Ballots.** A vote may be cast in the manner determined by the Committee, including in person, by proxy or by absentee ballot. All proxy appointments shall be in writing, dated and signed by the Owner and shall be filed with the Committee in accordance with any procedures adopted by the Committee. A proxy given for a specific meeting shall be valid for any adjournment of that meeting, unless otherwise stated in the appointment of proxy. An appointment of a proxy is valid for 11 months unless a different period is stated in the appointment form. An appointment of a proxy is revoked by the person appointing the proxy: (1) attending any meeting and voting in person, (2) giving written notice to the Committee that the appointment of the proxy is revoked, or (3) giving a subsequent appointment form to the Committee.

**3.7 Quorum of Owners.**

3.7.1. "Quorum" means the Owners holding the minimum number of Percentage Interests necessary to make proceedings or an action valid, when such Owners are duly represented in person or by proxy or absentee ballot at a meeting or by casting a written ballot in an action by written ballot or consenting to an action without a meeting). When a quorum is once present to organize a meeting it is not broken by the subsequent withdrawal of an Owner.

3.7.2. Annual Meeting. At any annual meeting of the Association membership, a quorum is those Owners that are present or represented for any purpose, and at least one Committee member present in person, except for matters for which the Declaration or these Bylaws require a higher quorum.

3.7.3. Special Meetings, Action without Meeting. At any special meeting of the Association membership, and for any action taken without a meeting, Owners holding one-third (1/3) of the Association voting rights, represented in person, by proxy, by written ballot or written consent, and at least one Committee member present in person, shall constitute a quorum, except for matters for which the Declaration or these Bylaws require a higher quorum. If any meeting or action of the Owners cannot be organized because of a lack of quorum, the Committee may adjourn the meeting or action to a time at least 48 hours from the time of the meeting or action at which a quorum was not present and Owners holding twenty percent (20%) of the voting rights, represented in person, by proxy, by written ballot or written consent, shall constitute a quorum at such adjourned meeting or vote.

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

**3.9 Order of Business.** The order of business at annual meetings of the Association shall be according to the order established by the president, and by way of example, may include the following: (a) calling of the roll and certifying of proxies; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of the preceding meeting; (d) reports of officers; (e) reports of committees, if any; (f) election of Committee members; (g) unfinished business; (h) new business; and (i) adjournment.

**3.10 Meeting Procedure.** Rules of order may be adopted by resolution of the Committee, otherwise, the president shall conduct meetings and determine any procedures to be followed and shall have authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal, comment, or question and answer portions). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

**3.11 Minutes of Owner Meetings.** The secretary or other person the Committee delegates shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Owners present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against an issue, and (5) the exact wording of any item approved at the meeting. Failure to comply with this section does not invalidate any action taken at a meeting. Minutes are permanent records of the Association and shall be kept and made available in accordance with Section 9.

**3.12 Action by Written Ballot without a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than 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. The ballot or a writing accompanying the ballot shall: (1) state the number of responses needed to meet quorum requirements; (2) state the percentage of approvals necessary to approve each matter; (3) specify the time by which a ballot must be received by the Association in order to be counted; and (4) be accompanied by written information sufficient to permit each person casting a ballot to reach an informed decision on the matter. In the event the action is for election of Committee members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting. The Committee may elect to conduct a vote pursuant to this section by a secrecy procedure determined by the Committee whereby a written ballot is accompanied by: (i) a secrecy envelope; (ii) a return identification envelope to be signed by the Owner; and (iii) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

**3.13 Action without Notice and a Meeting.** Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more written consents, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be

received by the Association within a sixty day period. Any such writing may be received by the Association electronically. 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. Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

**3.14 Voting by Fiduciaries and Joint Owners.** An executor, administrator, guardian, or trustee may vote with respect to any Unit owned or held in such capacity, whether or not the Unit has been transferred to the person's name; provided, that the secretary is satisfied that the person is the executor, administrator, guardian, or trustee holding the Unit in such capacity. 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, in the absence of protest by a co-Owner prior to the tallying of votes, so long as only one vote for such Unit is cast. In the event of a protest prior to the vote tally or of the casting of two or more conflicting votes, the vote of the Unit shall be disregarded completely, except the vote shall count toward any quorum requirement.

**3.15 Record Date – Determining Owners Entitled to Notice and Vote.** Unless a different date is set by the Committee, the Owners entitled to notice of a meeting are the Owners reflected in the Association's records at the close of business on the business day before the day notice is given. The Owners entitled to vote at an Association meeting are the Owners: (1) reflected in the Association's records on the date and time of the start of the meeting, and (2) who are otherwise eligible to vote. The Owners entitled to vote in an action under Sections 3.12 or 3.13 are the Owners: (1) on the date the first written consent or ballot is solicited or sent, and (2) who are otherwise eligible to vote.

**3.16 Resolution of Voting Disputes.** In the event of any dispute as to the entitlement of any Owner to vote, the required procedures and process for a vote of the Owners, or as to the result of any vote of Owners, the Committee shall act as arbitrator and the decision of a majority of the disinterested and independent directors present at a meeting of the Committee (including the decision of a single disinterested and independent director, if only one), whether or not such independent directors constitute a quorum, shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon as such in accordance with Utah law.

## **4. MANAGEMENT COMMITTEE: SELECTION, ELECTION, TERM**

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

4.1.1. The affairs of the Association shall be governed by a Management Committee composed of three Committee members.

4.1.2. Members of the Committee shall serve for terms of two (2) years. Elections shall be staggered so all Committee members are never elected in the same year. Despite the expiration of a Committee member's term, a Committee member continues to serve until the Committee member's successor is elected.



4.1.3. A Committee member must be an Owner in Good Standing or the spouse of an Owner in Good Standing. A representative of an entity which entity is an Owner in Good Standing may serve on the Committee, 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 Committee if the corporation, LLC, partnership, trust or estate owns a Unit as an Owner in Good Standing.

**4.2 Nomination.** Nomination for election to the Management Committee shall be made in the manner determined by the Management Committee, which may include formation of a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) be made by petition filed with the Association a specified number of days prior to the annual meeting, which petition shall be signed by the nominee named therein indicating the nominee's willingness to serve as a member of the Committee, if elected. The Management Committee may, but is not obligated to, inquire of the Owners to identify those having an interest in serving on the Committee. The Management Committee or, if established, the nominating committee, shall make as many nominations for election to the Management Committee as it shall in its discretion determine, but not less than the number of vacancies. Self-nomination of candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or determined by the Management Committee.

**4.3 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. Voting in an election shall be by written ballot. The persons receiving the largest number of votes shall be elected. If only one candidate has been nominated for a position and there is no possibility for another candidate to be nominated under the procedures determined by the Committee, the president may declare the nominee elected without a formal vote. Cumulative voting is not permitted. In the event of a tie between two or more candidates, another vote shall be held and if the tie persists, the Committee shall determine whether voting continues until there is no longer a tie, or to adjourn the vote to another date or to a subsequent annual meeting. In the event of such a tie, no candidate is elected and the incumbent Committee member continues to serve until a successor is elected or properly appointed.

**4.4 Vacancies.** Vacancies on the Committee, unless caused by the removal of a Committee member by a vote of the Owners under Section 4.6, shall be filled for the balance of the term by vote of a majority of the remaining Committee members even though they may constitute less than a quorum. Each person so elected shall be a Committee member until a successor is elected upon expiration of the term for which the person was elected by the other Committee members to serve.

**4.5 Compensation.** No Committee member shall receive compensation for any service he or she may render to the Association as a Committee member. However, any Committee member may be reimbursed for actual expenses incurred in the performance of his or her duties. Nothing herein shall preclude a Committee member from receiving compensation for any other service performed for the Association other than as a Committee member or officer.

#### **4.6 Removal of Management Committee Members.**

4.6.1. At any annual or special meeting, any one or more of the Committee members may be removed, with or without cause, by a majority of the total voting interests of all Owners of the Association. 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 Committee member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.6.2. A Committee member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular meetings of the Committee, or is absent from more than 25% of the regular Committee meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Committee his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

### **5. MANAGEMENT COMMITTEE MEETINGS**

**5.1 Meeting Definition.** “Meeting,” when capitalized in this Article 5, means a gathering of the Management Committee, whether in person or by means of electronic communication in real time under Section 5.6, at which the Committee can take binding action.

**5.2 Regular Meetings.** Regular Meetings of the Committee shall be held at such place and hour as may be fixed from time to time by the Committee, 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 Committee with notice to all members of the Committee.

**5.3 Special Meetings.** Special Meetings of the Committee shall be held when called by the president, or by any two Committee members, after not less than forty-eight hours’ notice to each Committee member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.8 below. The notice must state the time, place, and purpose of the Meeting.

**5.4 Meeting Procedure.** Formal rules of order shall only apply to any Committee Meeting or Association meeting inasmuch as one or more such rules of order are adopted by the Committee by resolution. Meetings of the Committee shall be conducted by the president. In any event, a decision of the Committee may not be challenged because appropriate rules of order were not used.

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

5.5.1. Open Management Committee Meetings. Except as provided in subsection 5.5.3, all Meetings of the Committee shall be open to Owners. At each Meeting, the Committee shall provide each Owner a reasonable opportunity to offer comments. The Committee may limit the comments to one specific time period during the Meeting and may limit the time allotted to each Owner so long as the time allotted is determined by a majority of the Committee members present. Beyond such comment period, no Owner shall have a right to participate in the Committee Meeting unless the Owner is also a member of the Committee. The president or Committee shall

have the authority to exclude an Owner who disrupts the proceedings at a Committee Meeting. The Committee may adopt policies governing Meetings from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Committee shall also supersede these Bylaws to the extent the policy restates then current Utah law.

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

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

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

**5.6 Meetings by Electronic Communication in Real Time.** In the event of an emergency, or by decision of the Committee, and to the fullest extent allowed by law, Meetings of the Committee may be conducted by means of electronic communication that allows all members of the Committee participating to be able to communicate orally in real time.

**5.7 Minutes of Committee Meetings.** The secretary (or other person as the Committee may delegate) shall take minutes of all Committee meetings. The minutes shall include, at a minimum, (1) the identification of the Committee members present, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any item approved at the meeting. Failure to comply with this section does not invalidate any action taken at a meeting.

Minutes are permanent records of the Association and shall be kept and made available in accordance with Section 9.

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

**5.9 Quorum and Acts; Committee Proxies.** At all Meetings of the Committee, a majority of the existing Committee members shall constitute a quorum for the transaction of business and the acts of the majority of the Committee members represented shall be the acts of the Committee. If, at any Meeting of the Committee, there is 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 Committee member may be considered to be present at a Meeting and to vote if the Committee member has granted a signed written proxy: (1) to another Committee member, or other person, who is present at the Meeting; and (2) authorizing the other Committee member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

**5.10 Action by Committee without a Meeting.**

5.10.1. Notice, Response. Subject to subsection 5.10.3, the Committee may take any action (vote on any decision) in the absence of a Meeting which it could take at a Meeting if either:

- (1) all Committee members vote in favor of the action in writing, or
- (2) if notice of the vote is sent to each Committee member and no Committee member demands that action not be taken without a meeting. The action must receive the number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted.

5.10.2. Content of Notice. The notice required by subsection 5.10.1(2) (the "Notice") shall include: (1) the action to be taken; (2) the time by which a Committee member must respond to the Notice; (3) that failure to respond by the time stated in the Notice will have the same effect as abstaining in writing by the time stated in the Notice, and failing to demand in writing by the time stated in the Notice that action not be taken without a Meeting.

5.10.3. Meeting Required to Adopt Rules. The Board may not adopt, amend, modify, cancel, limit, create exceptions to, or expand the Rules without a Meeting.

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

5.10.5. Revocation. A Committee member may revoke in writing a vote, abstention, or demand that action not be taken without a Meeting at any time before the time stated in the Notice.

5.10.6. Electronic Transmission. Any communication, including under this Section, may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Section if the transmission is delivered with information from which the Association can determine that the transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is sent. The date sent is considered the date signed. For purposes of this Section 5, communications to the Association are not effective until received.

5.10.7. Record of Action. A record of an action taken by the Committee without a Meeting shall be kept as a permanent record in accordance with Section 9 and the law.

## **6. POWERS, RIGHTS, AND DUTIES OF MANAGEMENT COMMITTEE**

**6.1 General Powers and Duties.** The Committee shall have the powers and duties necessary for the administration of the affairs of the Association. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Committee.

**6.2 Best Interest of Association.** A Committee member or officer shall discharge the Committee member or officer's duties (1) in good faith, (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (3) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association. The Committee members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association. No Committee member shall engage in the unauthorized practice of law as to, for, or on behalf of the Association or request or allow a manager to do so, or rely on the product of any unauthorized practice of law by another Committee member or manager.

**6.3 Reliance on Information.** In discharging duties, a Committee member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (1) one or more officers or employees of the Association whom the Committee member or officer reasonably believes to be reliable and competent in the matters presented, (2) legal counsel, a public accountant, or another person as to matters the Committee member or officer reasonably believes are within the person's professional or expert competence, or (3) in the case of a Management Committee member, a sub-committee of the Association or Management Committee of which the Committee member is not a member if the Committee member reasonably believes the sub-committee merits confidence.

## **6.4 Conflicts of Interest.**

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

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

## **7. OFFICERS AND THEIR DUTIES**

### **7.1 Designation and Qualification.**

7.1.1. Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Committee may designate the office of assistant treasurer and assistant secretary. Officers shall have such authority and perform such duties as the Committee may, from time to time, determine. An officer shall hold office for such period as the Committee determines when the officer is elected by the Committee members, and if no such determination is made, an officer shall hold office for one year.

7.1.2. Qualifications. The principal officers must be Committee members (and shall cease to be an officer upon ceasing to be on the Committee). Any Committee member may be an officer of the Association.

7.1.3. Multiple Offices. A person may simultaneously hold more than one office.

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

**7.2 Election and Vacancies.** The members of the Committee shall elect the principal officers of the Association at a Meeting or by action without a Meeting. An officer serves until the sooner of: (1) the expiration of the officer's term as a Committee member, or (2) the election of the officer's successor. If any office becomes vacant for any reason, the Committee 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 Committee, 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 Committee. Upon an affirmative vote of a majority of the members of the Committee any officer may be removed, either with or without cause.

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

**7.6 Duties of Officers.** Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and the Committee. The Committee may prescribe, expand or limit the authority and duties of officers, despite anything to the contrary in this Section 7.6. The Committee may delegate any powers or duties of officers to other persons or agents as the Committee deems necessary or appropriate from time to time. Any principal officer may execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. Subject to any expansion or limitation of the authority and duties of an officer by the Committee, the general duties of the principal officers are as follows.

7.6.1. President. The president shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The president shall preside at all meetings of the Association and of the Committee. 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.

7.6.2. 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 Committee. The vice-president shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

7.6.3. Secretary. The secretary shall prepare and maintain the minutes of all Meetings of the Committee and the minutes of all meetings of the Association. The secretary shall keep and make available records in the manner required by Section 9.2.4. The secretary is responsible for the preparation, maintenance and preservation of the records and information required to be kept by the Association under Section 9 of these Bylaws, by the Act, and by Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, and has charge of such books, papers and records as the Committee may direct. The secretary is responsible for authenticating records of the Association, and in general, shall perform all the duties incident to the office of secretary. The Committee may delegate to another person, including a Manager, any of the duties of the secretary.

7.6.4. Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a Manager, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in records belonging to the Association and for cooperating with the secretary to ensure financial records are kept and made available in accordance with Section 9 of these Bylaws and the law. The treasurer is 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 Committee and disbursing funds as directed by the Committee.

## **8. LIABILITY; INDEMNIFICATION OF DIRECTORS**

### **8.1 No Volunteer Liability.**

8.1.1. No volunteer providing services for the Association, including a volunteer Management Committee member or officer, incurs any of the following if (a) the individual was acting in good faith and reasonably believed the individual was acting within the scope of the individual's official functions and duties with the Association, and (b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct: (1) legal liability for any act or omission of the volunteer while providing services for the Association, and (2) personal financial liability for any (i) contract claim under any agreement, instrument or transaction entered into by such person on behalf of the Association, (ii) tort claim or other action seeking damage for an injury (including physical, nonphysical, economic, and noneconomic damage) arising from any act or omission of the volunteer while providing services for the Association, or (iii) any claim arising out of the use, misuse or condition of any part of the Property that might in any way be assessed against or imputed to the volunteer as a result of or by virtue of their capacity as a volunteer, director, officer or committee member, including by any victim of a crime occurring at the Property.

8.1.2. "Volunteer" means any individual performing services for the Association who does not receive anything of value from the Association for those services except reimbursements for expenses actually incurred and annual compensation equal to no more than the annual assessment amount per Unit.

8.1.3. The protection against volunteer liability provided by this Section does not apply (1) to injuries resulting from a volunteer's operation of a motor vehicle, or (2) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law.

**8.2 Indemnification.** Each officer and Management Committee member shall be indemnified by the Association to the fullest extent permitted by law, including the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities incurred by such person in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which the person is or may be a party by reason of being or having been a Committee member or officer of the Association, and upon submitting notice to the Association of any such action, suit or proceeding, the Association shall undertake all costs of defense and advancement of loss to the fullest extent permitted by law, until and unless it is proven that the alleged damage or injury was caused by an intentional or knowing act by the person which constitutes illegal, willful, or wanton misconduct. Upon such proof, the Association is not liable for such cost of defense or loss, and may recover amounts already expended from the officer or Committee member who so acted. The right to indemnification provided by this section shall not be exclusive of any other rights to which the Committee member or officer may be entitled by law or agreement or otherwise. Punitive damages may not be recovered against the Association.



## 9. RECORDS AND AUDITS

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

### 9.2 General Records.

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

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

9.2.3. Assessment Roll. There shall be an account for each Unit in the assessment roll. 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.

#### 9.2.4. Certain Records.

(a) The Association shall keep and make available to Owners without charge, through the Association website, or, if the Association does not have an active website, then physical copies of the documents shall be made available to Owners during regular business hours at the Association's address registered with the Department of Commerce's Utah HOA Registry, a copy of the Association's: (1) Declaration and Bylaws, (2) most recent approved minutes, and (3) most recent budget and financial statement.

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

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

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

**9.4 Availability of Records to Owners.**

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

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

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

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

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

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

## **10. AMENDMENTS**

The approval of Owners holding at least 60% of those Percentage Interests which are held by Owners in Good Standing and the approval of a majority of the Eligible Holders shall be required for any amendment to these Bylaws. 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.

## **11. MISCELLANEOUS**

**11.1 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.

**11.2 Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used 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.

**11.3 Fiscal Year.** The fiscal year of the Association shall be determined by the Committee.

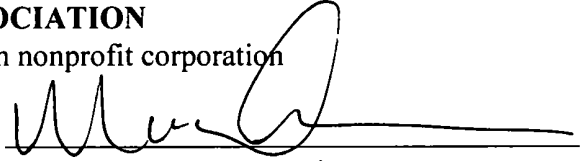
**11.4 Conflict.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 14<sup>th</sup> day of APRIL, 20 21.

**MARCAT CONDOMINIUMS OWNERS  
ASSOCIATION**

a Utah nonprofit corporation

Sign: \_\_\_\_\_



Print Name: MARC NORMAN

President