

WHEN RECORDED, MAIL TO:  
JOVID MARK RESIDENCES, LLC  
7026 S. 900 East  
Midvale, UT 84047

Ent 488440 Bk 1323 Pg 1307 - 1382  
PEGGY FOY SULSER, Recorder  
WASATCH COUNTY CORPORATION  
2020 Nov 12 01:44PM Fee: \$178.00 TC  
For: Bennett Tueller Johnson and Deere  
ELECTRONICALLY RECORDED

**DECLARATION OF CONDOMINIUM**  
**OF**  
**BLACK ROCK RESIDENTIAL CONDOMINIUMS**  
**(An Expandable Project)**

This Declaration of Condominium of BLACK ROCK RESIDENTIAL CONDOMINIUMS (“Declaration”), is made and executed this 10<sup>th</sup> day of November, 2020 by Jovid Mark Residences, LLC, a Utah limited liability company (“Declarant”), pursuant to the provisions of Utah Code Annotated, Title 57, Chapter 8, as amended (“Act”). This Declaration shall take effect when recorded in the Office of the County Recorder of Wasatch County, Utah (the “County Recorder”).

**RECITALS**

A. Declarant holds both legal and equitable title to certain real property, located in Wasatch County, State of Utah and more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference (the “Property”).

B. Declarant is developing a planned community known as Black Rock Residential on the Property, as shown on the Master Development Plat (the “Project”), which is expected to include a mixture of primary and secondary residential, nightly transient occupancy, extended lodging, multifamily, commercial, storage, recreational, and other facilities and amenities, some of which may constitute the Common Elements of the Project.

C. The Project is part of a larger planned community known as Black Rock Mountain Resort, organized pursuant to that certain Master Declaration of Covenants, Conditions, Easements and Restrictions for Jovid Mark Condos, as amended or supplemented from time to time, which is recorded against the Property (the “Master Declaration”).

D. Black Rock Residential Owners Association, a Utah nonprofit corporation (the “Association”), is being formed concurrently with the filing of this Declaration, which Association will maintain the Common Elements, provide for the management and operation of the Common Elements, levy and collect Assessments, and administer and enforce the terms of this Declaration, as hereinafter described.

E. The Association shall also be a member of Black Rock Mountain Resorts Master Association, a Utah nonprofit corporation, organized for purposes set forth in the Master Declaration (the “Master Association”).

F. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a planned community.

NOW, THEREFORE, Declarant hereby makes the following declaration:

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this ARTICLE I. Certain terms not defined in this ARTICLE I are defined elsewhere in this Declaration or the Master Declaration.

1.1 Act means the Utah Condominium Ownership Act as codified in Title 57, Chapter 8 of Utah Code Annotated, as amended.

1.2 Articles means the Articles of Incorporation of the Association.

1.3 Assessable Property means any Unit, except such part or parts thereof as may from time to time constitute Exempt Property.

1.4 Assessments means all assessments levied by the Association including Common Assessments, Special Assessments and Master Assessments.

1.5 Association means Black Rock Residential Owners Association, a Utah nonprofit corporation, organized for the purposes set forth in the Articles and this Declaration.

1.6 Bylaws means the Bylaws of the Association, a copy of which is attached hereto as Exhibit C, as amended from time to time.

1.7 Commercial Association means Black Rock Commercial Owners Association, a Utah nonprofit corporation, organized for the purposes set forth in its articles of incorporation and the Commercial Declaration.

1.8 Commercial Declaration means the Declaration of Condominium of Black Rock Commercial, recorded by Jovid Mark, LLC, a Utah limited liability company, governing the Commercial Project.

1.9 Commercial Owner means any Person or entity or combination thereof, including Declarant, at any time owning a Commercial Unit within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Commercial Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

1.10 Commercial Project means the condominium project established in the Commercial Declaration, which is a part of the Master Project.

1.11 Commercial Unit means a Unit within the Project which has been designated Exhibit B and/or on the Master Development Plat for commercial use.

1.12 Common Assessments means the assessments levied by the Association to pay the Common Expenses pursuant to Section 13.2 below.

1.13 Common Elements means all portions of the Project (other than the Units, Limited Common Areas and portions of the Project dedicated to public use). Except to the extent owned or delegated to the use of the Master Association or Commercial Association, and not delegated by the Master Association to the Association for management, the Common Elements include, without limitation, hallways, walkways, stairways, elevators or other areas necessary to access the Units and Common Elements in the Project, lobbies, roads, road shoulders, parking, driveways and appurtenances and easements, walkways, paths, and bicycle trails, street lights, signs, monument signs, recreational areas, open space areas, landscaping and landscaping improvement, sprinkler and irrigation systems, basins, bridges, retaining walls, snow storage areas, drainage devices, swales, storm water conveyance facilities, and detention basins, and common but not dedicated utility, CATV, satellite or other communications systems or security systems operated by the Association for the benefit of Owners, and all other areas designated as common areas on the Master Development Plat.

1.14 Common Expense Fund means the fund created or to be created pursuant to the provisions of Section 13.1 of this Declaration and into which all such monies of the Association shall be deposited, a portion of which, as determined by the Association from time to time, may be established and maintained for a reasonable contingency reserve, surplus, and/or sinking fund for the periodic regular maintenance, repair or replacement of the Common Elements.

1.15 Common Expenses means all expenses of the administration, ownership, cleaning, maintenance, repair, or replacement of the Common Elements and all other costs and expenses associated with the existence and administration of the Association.

1.16 Common Furnishings means all furniture, furnishings, appliances, fixtures and equipment and other property and interests therein at any time leased, acquired, owned or held by the Association for use in the Project.

1.17 Declarant means Jovid Mark Residences, LLC, a Utah limited liability company, and its successors and assigns.

1.18 Declarant Affiliate mean any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.19 Declaration means this Declaration of Condominium of Black Rock Residential Condominiums and all amendments, modifications and supplements hereto.

1.20 Eligible Mortgage means a Mortgage held by an Eligible Mortgagee.

1.21 Eligible Mortgagee means a First Mortgagee that has requested notice of certain matters from the Association in accordance with Section 18.1 below.

1.22 Exempt Property means (a) each Unit while owned by Declarant or Declarant Affiliate, until the earliest to occur of (i) the acquisition of its record title by a third party, other than Declarant or Declarant Affiliate, or (ii) Declarant or Declarant Affiliate voluntarily and expressly making a Unit non-exempt as specified herein, and (b) all Common Elements and Limited Common Areas.

1.23 First Mortgage shall mean a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

1.24 First Mortgagee shall mean any Person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage.

1.25 Governing Documents means the Master Declaration and related documents, this Declaration, the Bylaws, the Articles, the Rules and Regulations and the resolutions of the Management Committee, as each document may be amended from time to time.

1.26 Limited Common Areas means those parts of the Common Elements which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Areas shall include any balcony, deck, patio, or entryway adjacent to a Unit, storage spaces, lockers and other areas serving those particular Units, and as such may be designated on the Master Development Plat.

1.27 Management Committee means the governing board of the Association appointed or elected in accordance with this Residential Declaration and the Bylaws.

1.28 Manager means the Person, firm or company designated by the Commercial Owner and/or Declarant, to manage, in whole or in part, the affairs of the Association, including, without limitation, functions related to the Common Elements.

1.29 Master Assessments means the assessments described in Section 13.4.

1.30 Master Association means Black Rock Mountain Resort Master Association, a Utah nonprofit corporation, organized for purposes set forth in the Master Declaration.

1.31 Master Declaration means that certain Master Declaration of Covenants, Conditions, Easements and Restrictions for Jovid Mark Condos also known as the Black Rock Mountain Resort, as the same may be amended or supplemented from time to time.

1.32 Master Development Plat means collectively those certain plats as described as follows: JOVID MARK SUBDIVISION, Recorded September 19, 2017 as Document No. 442839; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS 2, 3 AND 4 (1<sup>st</sup> amendment) (PHASE 1), Recorded April 9, 2019 as Document No. 462319; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS AMENDING PARCELS 3 AND 5 (2<sup>nd</sup> amendment) (PHASE 2), Recorded April 10, 2019 as Document No. 462341; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS AMENDING PARCELS 4 AND 7

(3<sup>rd</sup> amendment) (PHASE 3), Recorded April 10, 2019 as Document No. 462344; duly recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.33 Master Project means the project set forth on the Master Development Plat, as governed by the Master Declaration, this Declaration, or the Commercial Declaration.

1.34 Mortgage means any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered. No Mortgage executed by an Owner of a Unit (other than Declarant or Declarant Affiliate) shall be construed to constitute a lien or other encumbrance upon any other Unit or upon the Common Elements or Common Facilities.

1.35 Mortgagee means any Persons or entity named as the mortgagee or beneficiary under any Mortgage, or any successor to the interest of such Person or entity under such Mortgage.

1.36 Owner means any Person or entity, including Declarant, at any time owning a Unit within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

1.37 Person means any individual or entity, including a corporation, partnership, limited partnership, limited liability company, trustee or trust, unincorporated or incorporated association, or any other entity with the legal right to hold title to, or an interest in, real property.

1.38 Residential Owner means any Person or entity or combination thereof, including Declarant, at any time owning a Residential Unit within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Residential Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

1.39 Residential Unit means a Unit in the Project which has been designated on Exhibit B and/or on the Master Development Plat for residential use within the Property.

1.40 Rules and Regulations means the rules adopted by the Management Committee pursuant to Section 12.5, as amended from time to time.

1.41 Special Assessments means the assessments which the Association may levy from time to time pursuant to Section 13.1 below.

1.42 Total Votes of the Association means the total number of votes appertaining to all Units in the Project, which shall be made in accordance with the provisions in ARTICLE XI.

1.43 Unit means a part of the Project which is owned by an Owner intended for any type of independent use.

## ARTICLE II

### DESCRIPTION OF IMPROVEMENTS

The Project will consist of both residential, non-residential and commercial uses within the buildings located on the Property, consisting of predominately residential uses, as depicted on the Master Development Plat. The Project is expandable to include additional buildings consisting of predominantly residential uses, which upon full expansion the Project will consist of approximately 200 Residential Units together with Commercial Units. Commercial Units within the Project may be used for commercial purposes, as determined by the Owner(s) thereof from time to time, including, without limitation, for a media room, fitness center, fitness class room, storage, and laundry. The Master Project commercial facilities may include, as determined in accordance with the Master Declaration, a spa, pool, sauna, hot tub, an arcade, restaurant/bar, room service/catering kitchen, market, meeting space(s), porte-cochere, offices - including sales, reservations, real estate, concierge, and the front desk, including lobby and reception areas, and other commercial uses established from time to time. Some of these commercial facilities of the Master Project, including some or all of the Commercial Units, may be available to Owners and others through voluntary membership of the "club" that operates these facilities or through patronizing the commercial operators that are open to the public, and the fees for such membership shall be paid by the electing Owner in accordance with the Master Declaration.

## ARTICLE III

### SUBMISSION TO THIS DECLARATION AND THE ACT

3.1 Submission to this Declaration and the Act. The Declarant hereby submits the Property and all improvements now or hereafter made in or upon the Property to the provisions of the Act. All of the Property is and shall be held, conveyed, sold, transferred, designed, constructed, operated, maintained, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium to be known as "Black Rock Residential Condominiums." All of the Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, its successors and assigns, each Owner, and to any Person acquiring, leasing (including Persons renting a Unit on a daily basis) or owning an interest in the Property and improvements comprising the Project and to their respective assigns, lessees, sublessees, Personal representatives, heirs, successors and assigns. Any party which may acquire an interest in any portion of the Project, or which may occupy any portion of the Project, shall be deemed to consent and agree to be bound by this Declaration and all of the easements, covenants, conditions, restrictions and other provisions herein contained.

3.2 Subordination; Incorporation. This Declaration and the Association are subordinate to the Master Declaration and the Master Association, respectively, and all Units located on the Property are subject the rules of and regulations established by the Master Association and to the terms and conditions of the Master Declaration, which terms and conditions are hereby incorporated herein by reference to the extent applicable hereto. In no event shall the Association

have any authority to contradict or amend the terms of the Master Declaration, except as provided therein.

3.3 Division into Units. The Project is hereby divided into Units, including an appurtenant undivided interest in the Common Elements.

## ARTICLE IV

### DESCRIPTION OF UNITS AND COMMON ELEMENTS

4.1 Description of Units. The Project contains Commercial Units and Residential Units as depicted on the Master Development Plat. The boundary lines of each Unit are as set forth on the Master Development Plat and consist of the undecorated and/or unfinished interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior finished surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit.

4.2 Common Elements. The real property upon which the Common Elements are located is managed by the Association. The Association shall manage, administer and maintain the Common Elements; provided, however, nothing contained herein shall preclude the Association from entering into contracts with other parties, including the Manager, to perform tasks related to the management, administration and maintenance of the Common Elements. All costs and expenses incurred in connection with such management, administration and maintenance of the Common Elements, including specifically, but without limitation, any capital improvement which is made by the Association upon or within the Common Elements (except the initial capital cost) and the cost of the acquisition of any Common Elements, shall constitute a Common Expense. Declarant shall be responsible for the payment of costs and expenses incurred in the initial construction and landscaping of the Common Elements; provided, however, Declarant shall have the right to determine what improvements, if any, shall be constructed upon the Common Elements. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Elements in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any Rules and Regulations promulgated by the Association.

## ARTICLE V

### NATURE AND INCIDENTS OF RESIDENTIAL UNIT OWNERSHIP

5.1 Nature of Units. Each Residential Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased,

rented, used, improved and otherwise affected in accordance with the provisions of this Declaration.

5.2 Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements and the exclusive right to occupy and use such Owner's Unit and any Limited Common Areas designed for the exclusive use by such Owner.

5.3 Interior of Units. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and interior surfaces of the doors forming the boundaries of such Owner's Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of such Owner's Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that the Management Committee determines that any such Residential Unit has developed an unsanitary condition or has fallen into a state of disrepair and in the event that the Owner of such Residential Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Residential Unit and correct or eliminate said unsanitary condition or state of disrepair.

5.4 Combination of Adjacent Units. Upon written approval from the Management Committee, in Management Committee's sole and exclusive discretion, two or more adjoining Residential Units may be utilized by the Residential Owner(s) thereof as if they were one Unit. Any walls, floors or other structural separations between any two such Residential Units, may, for as long as the two Residential Units are utilized as one Residential Unit, be utilized by the Residential Owner(s) of the adjoining Residential Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Residential Owner of one of such adjoining Units, any opening between the two Residential Units which, but for joint utilization of the two Residential Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owner(s) of each of the two Residential Units and the structural separations between the two Residential Units shall thereupon become Common Elements.

5.5 Use of Units. The Residential Units may be used and occupied for residential purposes only. The Owner of a Residential Unit may lease all or any portion of its Residential Unit for any such purpose, including without limitation all activities necessary, related or incidental to the operation of the Project for transient rentals.

5.6 Improvements to Units. Subject to the terms and conditions set forth in this Declaration, an Owner may make, at its own expense, improvements or alterations to its Unit or, upon approval by the Management Committee, which may be withheld in its sole discretion, the Limited Common Areas designed to serve only its Unit without the consent of any Owner or the Association (in the case of improvements or alterations to a Unit), on the conditions that: (a) the improvement or alteration does not impair any other Unit or any Limited Common Areas designed



to serve any other Unit; (b) the Owner of the Unit promptly repairs any damage to any Common Elements caused thereby at its cost and expense; and (c) the improvement or alteration complies with all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

## ARTICLE VI

### NATURE AND INCIDENTS OF COMMERCIAL UNIT OWNERSHIP

6.1 Nature of Commercial Units. Each Commercial Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

6.2 Interior of Commercial Units. Each Commercial Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors and interior surfaces of the doors forming the boundaries of such Commercial Owner's Commercial Unit and surfaces of all walls, ceilings, floors and doors within such boundaries. Each Commercial Owner shall keep the interior of his or her Commercial Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that the Management Committee determines that such Commercial Unit has developed an unsanitary condition or fallen into a state of disrepair and in the event that the Commercial Owner of such Commercial Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Commercial Owner and without liability to the Commercial Owner for trespass or otherwise, to enter said Commercial Unit and correct or eliminate said unsanitary condition or state of disrepair.

6.3 Combination of Adjacent Commercial Units. Upon written notice to the Management Committee, two or more adjoining Commercial Units may be utilized by the Commercial Owner(s) thereof as if they were one Commercial Unit. Any walls, floors or other structural separations between any two such Commercial Units, may, for as long as the two Commercial Units are utilized as one Commercial Unit, be utilized by the Commercial Owner(s) of the adjoining Commercial Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Commercial Owner of one of such adjoining Commercial Units, any opening between the two Commercial Units which, but for joint utilization of the two Commercial Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Commercial Owner(s) of each of the two Commercial Units and the structural separations between the two Commercial Units shall thereupon become Common Elements.

6.4 Use of Commercial Units. The Commercial Units may be used and occupied for commercial purposes only, including without limitation all activities necessary, related or incidental to the operation of the Project for nightly or transient rentals, as a resort or otherwise.

The Owner of a Commercial Unit may lease all or any portion of its Commercial Unit for any such purpose. Notwithstanding anything to the contrary contained herein, a Commercial Owner may:

(a) Perform such activities within its Commercial Unit as are common to or necessary for the conduct of commercial operations, including, without limitation, reception, office, kitchen, restaurant, nightclub, lounge, spa, fitness center, storage, arcade and retail operations, and any lights, sounds and odors which result from such activities shall not violate the terms of this Declaration.

(b) Apply for and obtain special use permits and licenses (e.g., liquor licenses) which are necessary or appropriate for the conduct of commercial activities in its Commercial Unit in accordance with the Governing Documents, without obtaining the approval of the Management Committee, on the condition that such permits and licenses are consistent with the existing zoning and actual uses of the Commercial Unit at the time the permit or license is applied for.

6.5 Improvements to Commercial Units. Notwithstanding anything to the contrary contained in this Declaration, a Commercial Owner may make improvements or alterations to its Commercial Unit or the Limited Common Areas designed to serve only its Commercial Unit without the consent of any Owner or the Association, on the conditions that: (a) the improvement or alteration does not impair any other Unit or any Limited Common Areas designed to serve any other Unit; (b) the Commercial Owner of the Commercial Unit promptly repairs any damage to any Common Elements caused thereby at its cost and expense; and (c) the improvement or alteration complies with all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

6.6 Additional Rights of Commercial Owners. Notwithstanding anything to the contrary contained in this Declaration, a Commercial Owner shall have the right, at its sole cost and expense, to install, operate, maintain, repair and replace machinery, equipment, utility lines, wires, circuits, cables, and conduits serving such Commercial Unit, along, across and through any and all Common Elements and any Limited Common Areas, on the conditions that (a) the Commercial Owner of the Commercial Unit, at its sole cost and expense, shall repair, replace and restore any damage to the Common Elements, and (b) such installation, maintenance, repair or replacement complies with all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction;

6.7 Amendment to Use Restrictions. Any amendment to this ARTICLE VI and any other additional restrictions subsequently imposed on the use of Commercial Units in the Governing Documents, shall require the consent of a two-thirds (2/3rds) majority vote of the Commercial Owners.

## ARTICLE VII

## TITLE TO UNITS

7.1 Title. Title to a Unit within the Project may be held or owned by any Person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

7.2 Inseparability. Except as otherwise provided herein, title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Elements appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, encumbrance, conveyance or other disposition, respectively of the entire Unit, together with all appurtenant rights created by law, by the Master Declaration or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

7.3 No Partition. The Common Elements shall be owned in common by all of the Owners. Except as otherwise provided in the Act, no Owner, nor any other person, may bring a suit for partition of the Common Elements.

7.4 Separate Mortgages by Owners. Each Owner shall have the right to mortgage or otherwise encumber such Owner's Unit or interest therein. However, no Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Elements or any part thereof, except the undivided interest therein appurtenant to such Owner's Unit. Any Mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

7.5 Separate Taxation. Each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel for taxation purposes and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law. For purposes of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interests in Common Elements appurtenant to such Units. All such taxes, assessments and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

7.6 Mechanics Liens. Any mechanic's lien or materialmen's lien arising as a result of repairs to or improvements of a Unit by an Owner shall be a lien only against such Unit. Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the Common Elements, if authorized in writing by the Association, shall be paid by the Association as a Common Expense and until paid shall be a lien against each Unit in proportion to the undivided interest in the Common Elements appurtenant to such Unit. On payment of the proportionate amount by any Owner to the lienor, the Owner shall be entitled to a release of such Owner's Unit

from the lien and the Association shall not be entitled to assess such Owner's Unit for payment of the remaining amount due for the repairs or improvements.

7.7 Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit number as indicated in this Declaration or as shown on the Master Development Plat. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

## ARTICLE VIII

### EASEMENTS AND OTHER RIGHTS

8.1 In General. The Property and any portion thereof which is sold as a separate Unit shall be conveyed and owned subject to and together with the easements herein recited or as shall be set forth on the Master Development Plat, whether or not such easements are specifically set forth in the document of conveyance. In each instance the physical location of an easement may, in some circumstances, be located in the same place and the use thereof may be shared with other easements similarly located and in each such instance the rights and privileges associated with each such easement shall be interpreted separately, but the use shall be deemed to be non-exclusive with any other easement similarly located. Easements granted pursuant to this Declaration and the Master Declaration shall be utilized in the manner that shall be reasonably determined to be the least disruptive to the Unit or Common Elements upon which such easement is situated. Unless otherwise expressly set forth herein, nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed.

8.2 Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Association:

(a) To suspend the voting rights and right to the use of the Common Elements, in a manner consistent with Utah Code 57-8a-309, by any Owner (i) for any period during which any Assessment against its Unit remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of the Governing Documents, and (iii) for successive sixty (60)-day periods if any such infraction is not corrected during any prior sixty (60)-day suspension period.

(b) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association.

(c) To regulate the use of the Common Elements through the Rules & Regulations and to prohibit access to those Common Elements, such as landscaped rights-

of-ways, not intended for use by the Owners. The Rules & Regulations shall be intended, in the absolute discretion of the Management Committee, to enhance the preservation of the Common Elements or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners.

8.3 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Elements or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Property, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the improvements constructed or to be constructed within the Project, by error in the Master Development Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

8.4 Easements of Maintenance; Cleaning and Repair. To the extent the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units, the Association, including its agents, shall have the irrevocable right to have access to each such Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Elements or for making emergency repairs at any time therein necessary to prevent damage to the Common Elements or to any such Unit. Such entry shall be made upon reasonable notice, except in the event of emergency, and with as little inconvenience to the Owners or occupants as practicable and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

8.5 Right to Ingress; Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Elements as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.

8.6 Association's Right to Use Common Elements. The Association shall have an easement to make such use of the Common Elements as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration.

8.7 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Elements for the purpose of completing construction of the Project and making improvements therein as shown on the Master Development Plat, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith.

8.8 Easements Deemed Created. All conveyances of Units within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such

reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE IX

### USE RESTRICTIONS

9.1 Restrictions on Use of Residential Units. No Residential Unit shall be used for commercial purposes; provided, however, that nothing in this Section 9.1 shall prevent (a) Declarant or Declarant Affiliate or a duly authorized agent from using any Unit owned or leased by Declarant as sales offices and model Units or a property management office, or (b) any Owner, including Declarant or Declarant Affiliate, or such Owner's duly authorized agent from renting or assigning the use of such Owner's Unit and operating such Owner's Unit for lease and rental purposes.

9.2 Pets/Animals. Except as otherwise determined by the Management Committee in its sole and exclusive discretion or as set forth in the Rules and Regulations, no animals, birds, and/or fish of any kind may be raised, bred, or kept at the Project.

9.3 Land Use. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property.

9.4 Motor Vehicles & Trailers. The rules and regulations regarding the driving, parking, standing, and storing of motor vehicles and trailers in, on or about the Project is governed by the Governing Documents, and shall be further established and amended from time to time by the Master Association in accordance with the terms of the applicable Governing Documents.

9.5 Leases and Rentals. Except as otherwise provided herein, there is no restriction on the right of any Owner to lease, rent or otherwise grant occupancy rights to a Unit. Each Owner, by acceptance of a deed or other document of conveyance, acknowledges and agrees that the Residential Units may be rented on a nightly, weekly, monthly, or other periodic basis, and that vacation and other short-term leases and rental are permitted. Each Owner acknowledges and agrees that certain marketing and/or rental fees may apply with respect to the rental of its Unit as set forth in the Master Declaration. Short term rentals of every kind are allowed, subject to the condition that Owners who rent their Residential Units for an initial term of less than thirty (30) days ("Short-Term Basis") shall:

- (a) Use a professional rental management company, duly licensed and qualified in the State of Utah, which shall provide the following: (i) 24-hour management services; (ii) have all necessary business and other licenses or permits required by the county or state in which the Property is situated; and comply with any required rules, regulations, and restrictions imposed by the county or state in which the Property is situated; (iii) provide a 24-hour, professional rental management company assistance phone number to each customer renting on a Short-Term Basis; and (iv) provide a local responsible party who is available by telephone twenty-four (24) hours per day, resides within thirty (30) miles of the Residential Unit to be rented, and is able and willing to respond to the Residential Unit

within one (1) hour of a county or Association request to remediate a public health, safety or welfare concern or a neighbor complaint. Such local responsible party may be an employee of the professional rental management company.

(b) Maximum occupancy of any lease or rental Residential Unit shall not exceed two people per available bed.

(c) Owners shall ensure that all applicable sales & use taxes, transient room taxes and other taxes are paid to the relevant taxing authorities with respect to lease and rentals on a Short-Term Basis.

(d) Owners shall comply in all respects with all laws and regulations applicable to leases and rental on a Short-Term Basis.

(e) Owners are responsible for the actions and behavior of their tenants and guests in accordance with the Governing Documents, and any violation thereof by a tenant or guest may result in a fine that is the responsibility of the Owner.

9.6 Restrictions on Use of Units. A Unit may not be used for any of the following purposes, except as specifically authorized by this Declaration.

(a) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of used goods or merchandise, excess inventory, discounted items, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales;

(b) tanning parlors, massage parlors or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility or a day spa operation that also offers beauty, body care, skin care, or similar services;

(c) adult entertainment uses, which shall include for purposes of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel); or (ii) sexually explicit games, toys, devices, or similar merchandise; and

(d) tattoo parlors, body piercing shops, and shops offering or promoting illegal drugs.

9.7 Noxious, Offensive or Illegal Activity. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners, except as provided by ARTICLE VI.

9.8 Unsafe or Hazardous Activities. No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any Person or property.

9.9 Prohibition on Timeshare/Fractional Programs. No Unit, whether leased or owned, shall be used for any of the following (hereinafter called a “Timeshare Program”):

(a) for the operation of a timesharing, fractional ownership, interval ownership, private residence club or similar program whereby the right to exclusive use of the Unit rotates among participants in the program, regardless of whether such program utilizes a fixed or floating schedule, a first come-first served reservation system or any other arrangement; or

(b) for the operation of a reservation or time-use system among co-Owners of a Unit, regardless of whether or not any co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating, if one or more of the following conditions exist: (i) the ownership interest in such Unit is marketed for sale to the public subject to such system, or (ii) the co-Owners are or were required as a condition of purchase of the ownership interest in such Unit to subject the interest to a pre-determined reservation or time-use system among co-Owners; or

(c) in the marketing, offering or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Unit, or involving the Unit and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating (such interest referred to herein as an “Interest”), if one or more of the following conditions exist: (i) the Interest is marketed for sale to members of the public, or (ii) the Interest-holders are or were required as a condition of purchase of the Interest to be subject to a pre-determined reservation or time-use system among Interest-holders, or among Interest-holders and others.

Mere co-ownership of a Unit, ownership of a Unit by an entity, or short-term leasing of a Unit shall not create a Timeshare Program unless it meets any of the conditions described above in this Section 9.9. The inclusion of a Unit in a nightly or other rental on a Short-Term Basis shall not be considered to create a Timeshare Program. All use and occupancy arrangements falling within the definition of “timeshare interests” under the Utah Timeshare and Camp Resort Act (Utah Code Annotated §§ 57-19-1, *et seq.*) shall be considered Timeshare Programs, but a determination that any use and occupancy arrangements do not constitute a “timeshare interest” under such act shall not be determinative of whether such arrangements constitute a Timeshare Program hereunder. It is intended that the definition of “Timeshare Program” hereunder shall be broader than, and not limited by, the definition of “timeshare interest” under the Timeshare and Camp Resort Act.



9.10 Balconies. An Owner shall keep the Limited Common Areas designed to serve only its Unit and balcony or deck appurtenant to such Owner's Unit (collectively "Balcony") in a good, clean, neat and orderly condition. Provided that such items are approved in advance and in writing by the Management Committee, an Owner may keep the patio furniture on the Balcony that is of a type and brand approved by the Management Committee. Except for patio furniture as limited herein, no other items may be maintained, stored or kept on a Balcony, including, without limitation, patio covers, clothes lines, bicycles, toys, tools, barbecue and/or grill. No laundry, blankets, towels or any other item may be hung or draped on or over any portion of a Balcony. No noxious or offensive activity shall be carried in or upon any part of a Balcony nor shall anything be done on or placed in or upon any part of a Balcony which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. This Section shall not be amended unless at least a majority of the Total Votes of the Association consent and agree to such amendment.

9.11 Signs. No sign, notice or advertisement (except as may be used by Declarant as part of its sales program) shall be inscribed, hung or exposed on any portion of the Property or any Unit therein (including any portion of a Balcony) except such as shall have been previously approved in writing by the Management Committee, which consent may be withheld within the sole and exclusive discretion of the Management Committee.

9.12 No Satellite Dishes. No Unit shall have a satellite dish.

9.13 Window Coverings. No Residential Unit shall have window blinds or coverings. Each Residential Unit shall have all windows covered by blackout drapes of the type and brand approved in writing by the Management Committee.

9.14 Garbage and Refuse Disposal. Each Owner shall regularly remove all rubbish, trash and garbage from such Owner's Units, shall not allow such rubbish, trash and garbage to accumulate thereon, and shall comply with all Rules and Regulations regarding the same.

9.15 Rules and Regulations. Each Owner shall comply strictly with all Rules and Regulations adopted by the Association and the Master Association for the governance of the Units, the Common Elements and the Project, as such Rules and Regulations may be modified, amended and construed by the Association, in the reasonable discretion of the Management Committee, and the Master Association. All Owners are given notice that their use of the Units and the Common Elements is limited by the Rules and Regulations of the Association and the Master Association as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of the Owner's Unit can be affected by this provision and that the Rules and Regulations may change from time to time.

9.16 Enforcement Power. The Association shall have the power, subject to the primary power of the Master Association, to enforce the covenants and restrictions contained in this Declaration, but only as such covenants and restrictions relate to the Project.

## ARTICLE X

## DECLARANT RIGHTS

10.1 Right to Construct. Declarant reserves the right, but is not obligated to construct (a) any improvements shown on the Master Development Plat on the Property and (b) any other buildings, structures, or improvements that Declarant desires to construct on the Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

10.2 Declarant Control Period. There is hereby established a period of Declarant control of the Association during which period Declarant or Persons designated by it shall have the authority to appoint and remove the Association officers and members of the Management Committee. The Declarant or Persons designated by it may appoint Declarant's officers, employees or agents as members of the Management Committee or as officers of the Association. The "Period of Declarant Control" shall commence on the date of the recording of this Declaration and ending on the earlier of (a) six (6) years after the first Unit is conveyed to an Owner; (b) sixty (60) days after 75% of the Units, including any Units which are contemplated by further amendment or supplementation to the Master Development Plat, have been conveyed to Owners; or (c) the surrender by Declarant of such right by written notice to the Management Committee.

10.3 Sales Models and Offices. Declarant hereby reserves the right to maintain, utilize and relocate sales offices, management offices, signs advertising the Project and/or the Master Project and models in any of the Units which it owns or leases or on the Common Elements of the Project for so long as Declarant is an Owner within the Project. Notwithstanding an Owner's right to resell such Owner's Unit and list such Unit with any firm or agency as such Owner shall determine, no Person or entity other than Declarant and/or a Declarant Affiliate, successors, agents or assigns, shall have the right to market or sell Units within the Project.

10.4 Project Name. During the Period of Declarant Control, Declarant hereby reserves the right to unilaterally change the name of the Project without the consent of any other Owner or of the Management Committee.

10.5 Conveyance of Units to Association. Declarant hereby reserves the right, but not the obligation, to convey any Unit(s) owned by Declarant free of monetary liens to the Association and to the extent necessary or required, to amend this Declaration to effect the same. Upon the completion of any such conveyance, the obligation, if any, to pay all Assessments and other sums and amounts attributed to the Unit(s) will cease, and the attributed Assessments will be allocated among the other Units which are subject to Assessment. The Association shall not have the right to exercise any of the voting rights associated with the Unit(s) that have been conveyed by Declarant to the Association. The right to convey Units, and, to the extent necessary, to amend this Declaration to effect the same shall occur at any time prior to the date when Declarant both owns no Units and has no further development rights under this Declaration, and Declarant may, without being required to obtain the consent or joinder of any Owner, Mortgagee, lien holder or other Persons, execute, deliver and record any deed of conveyance and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

10.6 Easement for Telecommunications. Declarant hereby reserves an exclusive easement for itself and its successors and assignees for the present and future construction, operation, maintenance, repair and replacement of all types of communication services within the Project, which may include, without limitation, voice services, video services, internet, security services, and similar services that may be available in the future, and the facilities and appurtenances necessary to the same. Declarant further reserves a right of access to such facilities over, across, and through all other Common Elements of the Project in order to access the facilities to provide communication services to the Project, or to any other property owned by Declarant, its successors and assigns, and to exercise the rights established herein. Declarant may transfer by easement, license agreement or other conveyance, some or all of the rights reserved hereunder to one or more communication service providers, in connection with the provision of communication services to the Project or any adjoining parcel. Declarant may exercise all of the rights under this Section without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant, and deemed reasonable by Declarant, documenting the rights hereunder, in form satisfactory to Declarant, and any successor or assignee of its rights hereunder.

10.7 Interference with Declarant's Rights. Neither the Association, the Management Committee, nor any Owner may take any action or adopt any rule that interferes with or diminishes any of Declarant's rights hereunder, without Declarant's prior written consent. Any action taken in violation of this Section 10.7 shall be null and void and have no force and effect.

## ARTICLE XI

### THE ASSOCIATION

11.1 Membership. Each Owner shall be entitled and required to be a member of the Association. The Association shall have two classes of membership: Class A Members and Class B Members (as defined below). Each Owner of a Unit, other than Declarant or a Declarant Affiliate, shall be a Class A Member in the Association ("Class A Member"). The Declarant or a Declarant Affiliate shall be the Class B Member in the Association ("Class B Member") until the expiration of the Period of Declarant Control. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by such Owner.

11.2 Transfer of Class A Membership. Each Class A membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from Class A membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition, respectively, of a Unit shall include the Owner's Class A membership in the Association and rights appurtenant thereto. No Person or entity other than an Owner may be a Class A Member of the Association, and Class A membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available (as described below) to the Owners and the holders of the First Mortgage on any Unit current copies of the Declaration,

Articles, Bylaws and Rules and Regulations governing the Project and other books, records and financial statements of the Association. The term “available” under this Section shall mean available for inspection, upon not less than a five (5)-days prior request, during normal business hours or under other reasonable circumstances. The voting rights of the Owners shall be as set forth in the Articles and Bylaws.

11.3 Voting Classes. The two (2) classes of membership in the Association shall be entitled to the following voting rights:

(a) Class A. Until the expiration of the Period of Declarant Control, the Class A membership will be non-voting, except for voting on amending this Declaration in ARTICLE XXI and amending the mortgagee protection provisions in ARTICLE XVIII. After the expiration of the Period of Declarant Control, each Class A Member shall be entitled to one (1) vote per Unit square foot, subject to the authority of the Management Committee to suspend the voting rights of the Class A Member for violations of the Master Declaration or this Declaration in accordance with the provisions hereof.

(b) Class B. Until the expiration of the Period of Declarant Control, the Class B membership will be voting and will entitle the Class B Member to one (1) controlling vote on all Association member matters. Upon expiration of the Period of Declarant Control, Declarant shall be deemed to be a Class A Member as to the Units owned at such time.

11.4 Votes. Until the expiration of the Period of Declarant Control, the Class B Member shall be solely entitled to vote on Association member matters. After the expiration of the Period of Declarant Control, any provision requiring the vote or approval of the members of the Association shall be approved by a simple majority of all Class A Member votes present in person or by proxy at a meeting of the Class A Members at which a quorum is present in person or by proxy, unless a greater than simple majority of the membership is specified as being required in the Articles or Bylaws, in which case the greater percentage vote of the membership is obtained in a meeting of the Class A Members at which a quorum is present in person or by proxy.

11.5 Management Committee. The Management Committee shall consist of not less than three (3) nor more than seven (7) natural Persons, each of whom must be a member of the Association, except for Persons appointed by Declarant during the Period of Declarant Control.

11.6 Amplification. The provisions of this ARTICLE XI may be amplified by the Articles and the Bylaws; provided, however, that any such amplification shall conform to the rights or obligations of the Owners set forth in this Declaration.

11.7 Master Association Voting. The Management Committee shall vote on behalf of the Association with respect to any vote required by the members of the Master Association pursuant to the Master Declaration. The Management Committee may elect to cast the vote as one unified vote based on the vote of the majority of the Total Votes of the Association, or it may elect to cast a split vote to represent the appropriate proportion of the Total Votes of the Association.

## ARTICLE XII

CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION  
AND MANAGEMENT COMMITTEE

12.1 Common Elements. The Management Committee, acting on behalf of the Association, and subject to the obligations and duties of the Owners as set forth in this Declaration and further subject to the Master Association's right and obligations under the Master Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon (including the Common Furnishings) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with such Owner's Unit, if any, in a clean, sanitary and attractive condition. Unless otherwise such services are performed by the Master Association pursuant to the terms of the Master Declaration, the Association shall be responsible for (a) the maintenance and repair of the exterior of the improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of landscaping and walkways, and (b) the cleaning, maintenance, repair and replacement of Common Elements within the interior of the Project, including, without limitation, landings, stairways, utility lines, Common Furnishings and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Management Committee with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements. All goods and services procured by the Management Committee in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund. Notwithstanding any contrary provision herein, the Management Committee may delegate to the Master Association any or all of its obligations or duties hereunder and will be responsible to pay the Master Association for such services.

12.2 Manager. The Management Committee may employ the Manager to perform certain services on behalf of the Association, including but not limited to functions related to the Common Elements. Appropriate fidelity bond coverage shall be required for the Manager and for any officer, employee and agent of the Manager who handles funds of the Association. Such fidelity bond coverage shall meet the requirements of Section 15.6. The Management Committee may by written contract delegate in whole or in part to the Manager such of the duties, responsibilities, functions and powers hereunder of the Management Committee as are delegable. The services of the Manager retained by the Management Committee shall be paid for with funds from the Common Expense Fund.

12.3 Miscellaneous Goods and Services. The Management Committee may, in behalf of the Association, obtain and pay for the services of any Person as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such Persons are furnished directly by the Association or by any Person or entity with whom or with which it contracts. Whenever possible all such Persons shall be independent contractors. Any contracts between the Association or the Manager, on the one hand, and any affiliate of the Manager, on the other, shall be competitive with those available from unrelated third parties. The Management Committee may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this

Declaration. In addition to the foregoing, the Management Committee may, in behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage and/or recycling collection, electrical, gas, telecommunications, internet, television, and other necessary or desirable utility services for the Common Elements (and for the Units to the extent not separately metered or billed), insurance, bonds, taxes, and other goods and services common to the Units.

12.4 Real and Personal Property. The Management Committee may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise.

12.5 Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the use of the Units, the Common Elements, the Limited Common Areas and all parts of the Project, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. The Management Committee in behalf of the Association may take judicial action against any Owner or occupant to enforce compliance with such Rules and Regulations or other obligations of such Owner or occupant arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner or occupant.

12.6 Granting Easements. The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

12.7 Implied Rights. The Association may exercise any right, power or privilege given to it expressly by this Declaration, the Master Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

12.8 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association such Owner's true and lawful agent in such Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Master Development Plat as may be required by law or by vote taken pursuant to the provisions of the Declaration.

## ARTICLE XIII

### ASSESSMENTS

13.1 Assessments. Each Owner, by acceptance of a deed to any Unit, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association any and all Assessments levied against its Unit in accordance with the provisions of this Declaration. Notwithstanding anything else herein to the contrary, no Assessments of any kind shall be charged against Exempt Properties. The Assessments, together with interest thereon which shall accrue at the interest rate set forth in

Section 13.7, as set forth herein, late charges and costs of collection thereof, including court costs and reasonable attorney's fees, shall be a charge and continuing lien upon the Unit against which such Assessments are made from the date on which such Assessments are due. Assessments shall commence upon the date of the recording of this Declaration.

13.2 Common Assessments. The assessment levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners, to meet any obligations imposed on, incurred or assumed by the Association, to cover costs, including overhead and administrative costs, for the operation of the Association, and the ownership, operation, management, repair and replacement of the Common Elements, to pay all assessments payable by the Association to the Master Association pursuant to the Master Declaration, to pay applicable county and other property taxes, and to establish impound accounts as may be required by any governmental entity. Each Owner for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as the square footage of the Unit(s) owned by such Owner relative to the square footage of the Units owned by all other Owners (other than with respect to Exempt Properties). Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section 13.2 shall be the Common Expense Fund. Common Assessments shall be levied against each Unit and the Owner thereof, and shall be payable in such manner and at such time, including monthly, quarterly or annual installments, as the Management Committee may determine.

13.3 Special Assessments. In addition to the Common Assessments, the Association may levy in any calendar year, Special Assessments applicable to that year only, for any purpose that the Management Committee may determine in its sole and exclusive determination, including without limitation for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Elements, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners; structural alterations or capital additions or capital improvements to the Common Elements as are necessary in the Management Committee's sole and exclusive judgment to preserve or maintain the integrity of the Common Elements; to pay an increase in real property taxes; or imposing a special assessment against an individual Owner as a remedy utilized by the Management Committee to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Unit into compliance with the provisions of the Governing Documents, or any other governing instrument for the Project. The portion of any Special Assessment levied against a particular Unit shall be equal the square footage of the Unit(s) owned by such Owner relative to the square footage of the Units owned by all other Owners (other than with respect to Exempt Properties). The Management Committee shall provide notice by first class mail or electronic mail to all Owners of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

13.4 Assessments for Master Association. The Master Association imposes certain assessments and fees on the ownership, use, and transfer of Units. Each Owner, by accepting a deed or conveyance to a Unit, agrees to be bound by all of the terms and provisions of the Master Declaration and agrees to pay, as and when due, its applicable assessment, costs and fees arising

under the Master Declaration (the “Master Assessments”). The Association shall collect from each Owner all Master Assessments assessed against such Owner and shall in a timely manner remit all Master Assessments so collected to the Master Association. Notwithstanding anything to the contrary herein, nothing contained in this Declaration shall be construed so as to deprive the Master Association of any remedies for nonpayment of Master Assessments to the Master Association under the Master Declaration or otherwise.

13.5 Exempt Property Assessments. All Exempt Property described in this Declaration shall be exempt from Assessments. The Declarant or Declarant Affiliate may expressly waive its right to an exemption from Assessments of every kind as to some or all Exempt Properties of which it is then an Owner, by a supplemental declaration identifying such Exempt Properties and signed by it and all Mortgagees of such Exempt Properties. Anything in this ARTICLE XIII to the contrary notwithstanding, if, after an Assessment’s record date but before the end of the fiscal year for which it is levied, an Exempt Property becomes Assessable Property, then each Assessment which would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (i) the date on which such Assessment would have been due, if such part of Project had been Assessable Property on such record date, or (ii) the date on which such Assessable Property becomes subject to Assessment levy. If Exempt Property becomes an Assessable Property as provided for above, then the Association shall be deemed, automatically and without the need for further action, to have levied against it each Assessment for such fiscal year which the Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Exempt Property becomes an Assessable Property.

13.6 Declarant Subsidy. Notwithstanding any other provision of this Declaration to the contrary, no Assessments shall be levied against Exempt Property owned by the Declarant or Declarant Affiliate. However, for as long as any Unit owned by Declarant or a Declarant Affiliate shall be an Exempt Property, the Declarant reserves the right for itself and all Declarant Affiliates, in its sole and exclusive discretion, the right to subsidize the Association for the amount by which (i) the actual cost and expense of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Declaration, exceeds (ii) the total amount of Assessments levied against and collected from the other Owners. The subsidy allowed of Declarant under this Section 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, provided that “in-kind” contributions of goods or services must directly reduce the Association’s costs and expenses for which an Assessment is being levied as set forth in the Association’s budget, with such goods or services being valued at the amount the budgeted costs and expenses of the Association are so reduced. Within thirty (30) days of the end of each assessment period, the Management Committee shall make an accounting of the amounts that have been paid by Declarant (in cash, goods or services) as a subsidy. A copy of the accounting shall be sent to the Declarant and to each Owner in the Association, upon written request by the Declarant or any Owner, but no more frequently than quarterly.

13.7 Late Fee and Default Rate. All Assessments shall be due as determined by the Management Committee. Assessments and any installments thereof not paid on or before thirty



(30) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such other rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay Assessments within thirty (30) days of when due shall be subject to a late fee established by the Management Committee. All payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s).

13.8 Assessment Lien. There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation in the office of the County Recorder of a written notice of lien by the Management Committee or the Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law.

13.9 Foreclosure. In any foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power on behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act. The Association and each Owner hereby appoints Meridian Title Company (whose address and phone number is 126 W. Segoe Lily Drive, Sandy, Utah, 801-264-8888) its successors and/or assigns, 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. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code. Each Owner hereby conveys and shall upon taking title to a Unit be deemed to have conveyed all of its rights, title and interest in such Owner's Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under this Declaration, including but not limited to the obligation to pay all Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

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

13.11 Priority of Assessment Lien, Statement of Unpaid Assessments. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, liens imposed pursuant to the Master Declaration, a First Mortgage on a Unit as provided for herein and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments, interest, late fees and other charges against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Management Committee, Manager and every Owner, in favor of all who rely on such statement in good faith.

13.12 Assessment Constitutes Personal Obligation. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of such Owner's Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees. The personal obligation of an Owner to pay unpaid Assessments against such Owner's Unit shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner, including the First Mortgagee, from paying further Assessments.

13.13 Reserves. The Association through the Management Committee shall include in the Assessments amounts representing sums to be used for the replacement of or additions to capital items or improvements in the Project. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Elements for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. At least once every three (3) years the Management Committee shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy

anticipated future expenditure requirements. The Management Committee shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

(a) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than thirty (30) years.

(b) Identification of the probable remaining useful life of the components identified in subsection (a) above, as of the date of the study.

(c) An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subsection (a) above, during and at the end of its useful life.

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

(e) For the purposes of this Section, the term “reserve account requirements” means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

13.14 Right to Rents upon Default in Paying Assessments. If an Owner shall at any time lease such Owner’s Unit and shall default in the payment of Assessments, the Management Committee to the fullest extent permitted by the Act, may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner, or the professional manager of a Unit, the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid.

13.15 No Offset. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Association, the Management Committee, or any officer, employee, agent or representative thereof is not properly exercising its duties and powers under this Declaration.

## ARTICLE XIV

### PERSONAL CHARGES

14.1 Personal Charges. The Association and/or Manager may levy charges against an Owner or individual renting an Owner’s Unit (“Tenant”), for all expenses resulting from the act or omission of such Owner or Tenant (except an Owner’s failure to pay any Assessment) as set forth below (“Personal Charges”). Personal Charges include any expense resulting from the act or omission of any Owner or Tenant, including, without limitation: (a) the cost to repair any damage

to any portion of the Project, or to repair or replace any Common Furnishings on account of loss or damage caused by such Owner or Tenant; and (b) the cost to satisfy any expense to any other Owner(s) or to the Association due to any intentional or negligent act or omission of such Owner or Tenant resulting from the breach by such Owner or Tenant of any provisions of the Governing Documents.

14.2 Lien Securing Payment of Personal Charges. Personal Charges are not Assessments and are secured by the lien described in Section 13.8 above only to the extent such Personal Charges were incurred by an Owner. In addition, the Association shall have all other remedies described in this Declaration which are available to the Association against any Owner for nonpayment of such Owner's Personal Charges, including the right to rent described in Section 13.14.

## ARTICLE XV

### INSURANCE

15.1 Aggregate Coverage. Pursuant to the Master Declaration, the Master Association is required to maintain insurance covering the buildings of the Master Project. In the event that the Master Association fails to properly maintain insurance on the buildings located within the Project, the Association shall obtain and maintain, with respect to the Project, the following insurance policies:

(a) Hazard Insurance. A "master" or "blanket" multi-peril policy of property insurance covering the buildings, including, without limitation, fixtures and building service equipment to the extent that they are part of the Common Elements, Limited Common Areas, Common Furnishings and supplies belonging to the Association and the Project. Furniture and personal property located in Units shall be insured by their Owners. Such master policy of hazard insurance shall provide, at a minimum, protection against the following: (i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and (ii) all other perils customarily covered with respect to projects similar to the buildings in construction, location and use, including all perils normally covered by the standard "special" or "all risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the insurable value of the buildings (based upon the current replacement cost of the buildings and all property covered by the policy) located within the Project.

(b) Public Liability Insurance. A comprehensive policy of public liability insurance covering all of the Common Elements and Common Furnishings belonging to the Association and the Project (including all Limited Common Areas), commercial spaces and public ways (if any) in or around the buildings located on the Project, whether or not they are leased to a third party. Such insurance policy shall contain a severability of interest endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner or occupant because of the negligent acts of the Master Association, Association, Declarant, or other Owners or occupants. The scope of coverage shall include, without limitation: (i) legal liability of the insureds for property damage, bodily injuries and deaths of Persons in connection with the operation, maintenance or use of the Common

Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and (ii) additional coverages as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the buildings in construction, location and use, including, but not limited to, host liquor liability, contractual and all-written contract insurance and comprehensive automobile liability insurance.

(c) Coverage limits shall be in amounts generally required for projects similar to the buildings in construction, location and use with respect to the Project; provided, however, that such coverage shall be for at least Two Million Dollars (\$2,000,000) for bodily injury and Five Hundred Thousand Dollars (\$500,000) for property damage for each occurrence, including deaths of Persons and property damage arising out of a single occurrence.

15.2 Insurance Policy Requirements. The hazard and public liability insurance policies obtained by the Association pursuant to Section 15.1 shall be subject to the following:

(a) The policies shall be issued in the name of the Association and shall also include the board of the Master Association for the use and benefit of the Association and Owners. The Association, each Owner and such Owner's Mortgagee, if any, shall be beneficiaries of the policies in accordance with their respective interests in the Project. The Association must hold or otherwise properly dispose of any proceeds of insurance in trust for the Association, the Owners and their First Mortgagees, as their interests may appear. Evidence of insurance shall be issued to the Association, Owners and Mortgagees of Owners upon request.

(b) Insurance coverage must not be prejudiced by an act or neglect of individual Owners or occupants when such act or neglect is not within the control of either such Owners or occupants collectively or the Association.

(c) Coverage may not be cancelled, changed in a way which is adverse to a First Mortgagee or substantially reduced or modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice in advance of the effective date of any reduction in or cancellation of the policy to any and all insured parties, including the Association, Owners and any First Mortgagees.

(d) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, any Owner and/or their respective agents, employees or tenants.

(e) Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Utah.

(f) Each insurance policy shall be written by an insurance carrier which has a current financial rating by Best's Insurance Reports of class B + or better and a general policyholder's financial rating of XII or better.

(g) If at the time of loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, then the Association's policy is secondary and the Owner's policy is primary for such loss that originates within the Owner's Unit, or is caused by an accident, or negligence of an Owner or of an Owner's guest, tenant or invitee, and or is caused by items that are the Owner's responsibility to maintain, repair or replace.

(h) Each Owner shall have at least Twenty Thousand Dollars (\$20,000) of Coverage A Dwelling, including building items, improvements and betterments, etc., that are the responsibility of the Owner to insure pursuant to this Declaration, added to the insurance the Owner's procure to insure their personal property and the liability of the Owner. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, other Owners and their respective servants, agents and guests.

(i) Except as otherwise provided herein, the insurance maintained under this Declaration shall include the Units, but need not include improvements and betterments installed by the Owners that exceed the standards of such items found at the time of original building design and construction. Personal property of the Owner is the sole responsibility of the Owner to insure for any and all causes of loss.

15.3 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association, or the Owners to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association, or the Owners may deem appropriate from time to time.

15.4 Review of Insurance. The Management Committee shall review annually the coverage and policy limits of all insurance obtained and maintained pursuant to this ARTICLE XV and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the buildings located within the Project by a representative of the insurance carrier or carriers or insurance broker providing the policy or policies on the buildings or by such other qualified appraisers as the Association may select.

15.5 Cost Allocation. As further set forth in the Master Declaration, costs of obtaining the insurance required by this ARTICLE XV shall be fairly allocated to the Association and the Commercial Project.

15.6 Fidelity Bonds. The Management Committee shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

## ARTICLE XVI

## DAMAGE OR DESTRUCTION

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

16.2 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the buildings located within the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit, the Common Elements and other areas having substantially the same vertical and horizontal boundaries as before.

16.3 Procedures. In the event all or any part of the buildings within the Project is damaged or destroyed, and subject to the Master Associations obligations under the Master Declaration, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to each First Mortgagee with respect to a Unit in the event of substantial damage to or destruction of any Unit.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the buildings located within the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of such buildings damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceeds or equals the estimated costs to repair and reconstruct the damaged or destroyed part of the buildings, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the buildings located within the Project such buildings shall be promptly repaired and restored and the Owners shall be liable for assessment for any deficiency. However, if three-fourths or more of any of the buildings located within the Project are destroyed or substantially damaged and if the Owners, by a vote of at least seventy-five percent (75%) of the Total Votes of the Association, do not voluntarily, within one hundred (100) days after such destruction or damage, make provision for reconstruction, then the Project shall be subject to an action for partition. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all Owners in proportion to the square footage of the Unit(s) owned

by each such Owner relative to the square footage of the Units owned by all other Owners, and shall be distributed in accordance with the priority of interests in each Unit.

(e) Priority. In no event shall an Owner of a Unit or any other party have priority over any First Mortgagee on such Unit with respect to the distribution to such Owner of any insurance proceeds.

(f) Cooperation with Commercial Project. If necessary, the Association shall work closely with the Master Association and/or the Commercial Association in determining whether to repair any damage to the buildings located within the Master Project.

16.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed by the Association as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the buildings located within the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The buildings located within the Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit, the Common Elements and other areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the buildings located within the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Governing Documents and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of First Mortgagees.

16.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction by the Association is to occur, the insurance proceeds held by the Insurance Trustee shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the square footage of the Unit(s) owned by each such Owner relative to the square footage of the Units owned by all other Owners.

16.6 Amendment of Article. This ARTICLE XVI shall not be amended unless at least sixty-seven percent (67%) of the Total Votes of the Association consent and agree to such amendment.

## ARTICLE XVII

### CONDEMNATION

17.1 Notice of Proceedings. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Elements, Limited Common Areas or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the



Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

17.2 Damages or Awards. No Owner shall be entitled to a share in the damages with respect to the Common Elements and Limited Common Areas. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Elements and/or Limited Common Areas so taken on the remaining land or on other acquired land, provided that this Declaration and the Master Development Plat are duly amended. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his or her damages or award with the Management Committee, then at the option of the Management Committee, either a Special Assessment shall be made against the defaulting Owner and such Owner's Unit in the amount of the damages or award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

17.3 Distribution of Proceeds. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

(b) If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owners thereof. The remaining portion of such Unit, if any, shall become a part of the Common Elements and facilities and shall be placed in condition for use by all Owners in the manner approved by the Management Committee.

17.4 Changes to Project. Changes in Units, in the Common Elements and Limited Common Areas which are affected by the taking referred to in this ARTICLE XVII shall be evidenced by an amendment to this Declaration and the Master Development Plat, which need not be approved by the Owners.

## ARTICLE XVIII

### MORTGAGEE PROTECTION

18.1 Eligible Mortgagees. The Management Committee shall maintain a roster containing the name and address of each First Mortgagee that has provided the Management

Committee with written notice as described in this Section 18.1 (“Eligible Mortgagee”). To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Management Committee with a certified copy of its recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Eligible Mortgagee shall be stricken from the roster upon request by such Eligible Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded full release or satisfaction of the Eligible Mortgage. Notice of such removal shall be given to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Association’s receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner whose Unit is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 18.2 below or elsewhere herein.

18.2 Amendment to Article. No amendment to this ARTICLE XVIII which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless (i) Eligible Mortgagees holding security in at least fifty percent (50%) of the Units in the Project, and (ii) at least sixty-seven percent (67%) of the Total Votes of the Association, have all given their prior written approval to such amendments.

18.3 Priority of First Mortgage. The Assessment or claim against a Unit for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Unit shall take the same free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, Assessment lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit therein, affected or previously affected by the First Mortgage concerned.

18.4 Insurance Proceeds or Condemnation Awards. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds

or condemnation awards for loss to or taking of all or any part of the Units. All proceeds or awards shall be paid directly to any Mortgagees of record, as their interest may appear.

18.5 Declarant as Mortgagee. Any or all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

## ARTICLE XIX

### COMPLIANCE WITH DECLARATION AND BYLAWS

19.1 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles, Bylaws, the other Governing Documents, Rules and Regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Master Association, the Association or, in a proper case, by an aggrieved Owner.

19.2 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or the Master Declaration, or in any supplemental or amended Declaration or the Master Declaration, with respect to the Association, the Master Association or Units within the Project shall be enforceable by the Declarant or by any Owner of a Unit within the Project, subject to this Declaration and the Master Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or the Master Declaration, or in any supplemental or amended Declaration or the Master Declaration, with respect to a Person or entity or property of a Person or entity other than the Association and the Master Association, shall be enforceable by the Declarant, the Association or the Master Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

## ARTICLE XX

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

20.1 Agreement to Avoid Costs of Litigation. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this ARTICLE XX (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the properties at the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, causes of action, grievances or disputes, whether based in contract, tort, or applicable law, between such Bound Party and any other Bound Party involving properties at the Project or the purchase of any Unit from Declarant or a Declarant Affiliate, including, without limitation, claims, causes of action, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration or the Governing Documents

(collectively “Claim”), except for those Exempt Claims authorized under Section 20.2 below, shall be subject to the procedures set forth in Section 20.3 below.

20.2 Exempt Claims. The following Claims (“Exempt Claims”) shall be exempt from the provisions of Section 20.3 below:

(a) Any suit by Declarant against any Bound Party to enforce the provisions of this Declaration or the Master Declaration or to enforce any of Declarant’s developmental rights set forth in this Declaration;

(b) Any suit by the Association against any Bound Party to enforce the provisions of this Declaration or the Master Declaration, including any defensive or responsive actions by the party against whom the action is taken;

(c) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration or the Master Declaration, including any defensive or responsive actions by the party against whom the action is taken;

(d) Any suit between Owners (which suit does not implicate Declarant or a Declarant Affiliate) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Governing Documents;

(e) Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage; and

(f) Any suit or claim by the Association resulting from the Initial Development and Construction governed by Section 20.4.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 20.3, but there shall be no obligation to do so.

20.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative or governmental tribunal seeking redress or resolution of such Claim. Instead, the Claimant and Respondent must follow the dispute resolution procedures set forth in this Section 20.3:

(a) Notice. The Claimant shall notify each Respondent in writing of the Claim (“Notice”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, Person involved, Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Declaration, Governing Documents, or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not to do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with

Respondent, and is willing to meet in Person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Good Faith Negotiation. Each Claimant and Respondent (“Parties”) shall make every reasonable effort to meet in Person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Management Committee may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project.

(c) Final and Binding Arbitration. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the Arbitration Provisions attached hereto as Exhibit D or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. This Section 20.3 is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Utah. The arbitration award (the “Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah. In the event a Bound Party is compelled by a court to arbitrate any Claim, that Bound Party shall be required to pay all the attorneys’ fees and costs incurred by any other Bound Party in connection with compelling arbitration.

(d) Allocation of Costs of Resolving Claims. Each Party shall bear all its own costs incurred prior to and during the proceedings described in this Section 20.3, including the fees of its attorney or other representative. Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, “Arbitration Costs”), except as otherwise provided in this subsection (d) and (e); provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

20.4 Claims Arising from Initial Development and Construction. In all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Development and Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor, the Association shall be governed by the following:

(a) In all claims and causes of action by the Association, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party licensed in the State of Utah in the same profession, area of practice, or construction trade as to each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association’s

alleged damages and the factual basis for each such opinion. The Association's failure to file the affidavit in accordance with this Section 20.4 shall result in dismissal with prejudice of any claim described in this Section 20.4 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other Person or entity on behalf of that defendant in defending against the allegations of the Complaint.

(b) The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against a Developer, Design Professional, General Contractor, any design consultants of a Design Professional, or any subcontractors of a General Contractor not more than four (4) years after the date of Substantial Completion of the Initial Development and Construction. The Association waives all claims and causes of action not commenced in accordance with this section.

(c) During the four (4) years following the date of Substantial Completion of the Initial Development Construction, the Association shall schedule an annual walkthrough of all Common Elements with the Association's maintenance personnel and all Developers, Design Professionals, and General Contractors for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to all Developers, Design Professionals, and General Contractors, which time and date shall be during normal business hours. The Association shall conduct each walkthrough regardless of any lack of participation by any Developers, Design Professionals, or General Contractors. In the event the Developers, Design Professionals, or General Contractors do not participate, the Association shall inform them in writing of the results of the walkthrough consistent with Section 20.4.

(d) As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Development and Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Development and Construction to all Developers, Design Professionals, and General Contractors within thirty (30) days of first discovering the alleged defect, and each Developer, Design Professional, and General Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association's failure to provide notice in accordance with Section 20.4(d) shall result in dismissal with prejudice of any claim described in subsection 20.4(d) and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect. This dismissal in no way affects any claims, counterclaims, cross-claims, or defenses of Developers, Design Professionals, General Contractors, or any subcontractors of a General Contractor.

(e) To the extent damages are covered by insurance, the Association waives all rights against a Developer, Design Professional, General Contractor, any consultants of a

Design Professional, and any subcontractors of a General Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.

(f) The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Development and Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, and any subcontractors of a General Contractor.

(g) A Super Majority vote in favor by the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Development and Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor.

(h) Definitions. The following terms shall be defined as follows:

(i) Design Professional means any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Developer.

(ii) Developer shall mean the Declarant, Declarant Affiliate or their successors in interest in development of the Project.

(iii) General Contractor shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Developer.

(iv) Initial Development and Construction shall mean the design and construction of the Project, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this document.

(v) Super Majority shall mean 67% of the Owners.

20.5 Amendment of ARTICLE XX. Notwithstanding anything to the contrary in the Governing Documents, the requirements of ARTICLE XX may not be amended with respect to any Claim involving Declarant or any Declarant Affiliate unless Declarant or such Declarant Affiliate expressly consents in writing to such amendment.

## ARTICLE XXI

### AMENDMENT

21.1 General. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Master Development Plat shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast in Person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation

in the office of the Wasatch County Recorder of an instrument executed by the Association. In such instrument an officer or trustee of the Association shall certify that the vote required by this Section for amendment has occurred.

21.2 Amendment by Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; (c) if such amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Unit, or (d) if required for the further development of the Master Project; provide the rights of the Owners are not materially and adversely affected thereby.

21.3 Amendment for Benefit of Lenders. Anything in this ARTICLE XXI or Declaration to the contrary notwithstanding, Declarant also reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by the Declarant, specifying the nature of the qualifying reason for such amendment pursuant to this Section. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all Units and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the Period of Declarant Control. If any amendment requested pursuant to the provisions of this ARTICLE XXI deletes, diminishes or alters such Period of Declarant Control, Declarant alone shall have the right to amend this Declaration to restore such control.

21.4 Amendments to Comply with Construction. Notwithstanding anything contained in this Declaration to the contrary, because the Master Development Plat has been recorded prior to the construction of all of the Units, Declarant reserves the right to unilaterally amend the Master Declaration Plat at any time and from time to time by Declarant if such amendment is necessary to further develop undeveloped portions of the Project and Master Project, make technical corrections, to satisfy the requirements of Wasatch County or any other governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Master Development Plat.



## ARTICLE XXII

## EXPANSION OF PROJECT

22.1 Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to annex additional real estate and include additional parcels in the Project (“Additional Land”), which is more particularly described on Exhibit E attached hereto and incorporated herein by reference. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date this Declaration is recorded, unless sooner terminated by Declarant’s recorded waiver of such option, there being no other circumstances which will cause the option to expire prior to such seven (7) years. Such right may be exercised without first obtaining the consent or vote of the Owners or the Association and shall be limited only as herein specifically provided. Such parcels shall be constructed on any or all portions of the Additional Land. There shall be no limitations on the addition of any portion, part or the whole of the addition of the Additional Land. Furthermore, Declarant does not make any assurances as to whether any improvements shall be made on any portion, part or the whole of the Additional Land. While the Additional Land is identified herein, the boundaries of such Additional Land are not fixed or limited but are changeable, subject to the applicable governmental approvals. The Additional Land shall be limited to consisting of no more than 184 Residential Units and no more than 50 Commercial Units. Within the Additional Land and as to any Additional Land that may be added to the Project, the maximum percentage of the aggregate land and floor area of all Units that may be created on it, the use of which will not or may not be restricted exclusively to residential purposes, is 90%.

22.2 Supplemental Declarations and Supplemental Master Development Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Wasatch County, Utah, a supplement or supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Master Development Plats containing the same information with respect to the new Units as was required on the Master Development Plat recorded as of the date hereof with respect to the original Units established in the Project. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

22.3 Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term “Property” shall mean the real property initially submitted under this Declaration, plus any Additional Land added to the Project by a supplemental Declaration or by supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the supplemental Declaration and the supplemental Master Development Plat. The recordation in the office of the Wasatch County Recorder of a supplemental Master Development Plat incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Elements added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then Mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Elements and Facilities added to the Project, if any, as a result of such expansion.

22.4 Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a supplemental Declaration, and the Units therein shall be subject to ownership within a planned development with all the incidents pertaining thereto as specified herein, upon recording the supplemental Master Development Plat and supplemental Declaration in the said office of the Wasatch County Recorder.

22.5 Right of Declarant to Adjust Ownership Interest in the Association. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Owners their appurtenant membership in the Association, consistent with the Governing Documents and Utah law.

22.6 Revised Schedules and Exhibits. Accordingly, upon the recordation of a supplemental Declaration and supplemental Master Development Plat incident to any expansion, the revised schedule and exhibits of the Units, square footages and votes shall automatically become effective for all purposes and shall fully supersede any similar schedule or exhibit which was contained in any Declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

22.7 Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(a) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted, to the extent additional Units are Residential Units, to multi-family residential housing limited to a single family per Residential Unit and be subject to the Governing Documents.

(b) Portions of the Additional Land may be added to the Project at different times without any limitations.

(c) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Master Development Plat. The Association shall not allow anything to be built upon or interfere with said easement areas.

(d) No assurances are made concerning:

(i) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

(ii) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, buildings and Units will be comparable to the previously constructed facilities and will be of a similar quality of materials and construction and will be substantially completed prior to annexation.

(iii) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial phase except that the Units will be constructed of an equal or better quality of materials and construction than the Units in the initial Project phase, type, size, or maximum number of Common Elements which may be created within any portion of the Additional Land added to the Project.

(iv) The creation of Limited Common Areas and facilities within any portion of the Additional Land added to the Project, in terms of the types, sizes, and maximum number of Limited Common Areas within each portion.

(e) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

(i) The submission of any portion of the Additional Land to the provisions of the Act and under this Declaration;

(ii) The creation, construction, or addition to the Project of any additional property;

(iii) The carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

(iv) The taking of any particular action with respect to the Additional Land, or any real property annexed to the Project.

## ARTICLE XXIII

### MISCELLANEOUS PROVISIONS

23.1 Intent and Purpose. The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

23.2 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof. To the extent

of any inconsistency, the provisions of the Declaration shall control over the Articles and the Articles shall control over the Bylaws.

23.3 Notices and Registration of Physical and Electronic Mailing Addresses. Each Owner shall register from time to time with the Association such Owner's current physical and electronic mailing addresses. Any consent, request, notice or other communication required or contemplated by this Declaration shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) business days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next business day after delivered to such courier service for delivery on the next business day; or (d) if by e-mail transmission, on the day of transmission so long as the sender receives no evidence reasonably indicating delivery was unsuccessful, to the addresses for the applicable party, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

23.4 No Securities. Notwithstanding anything else herein to the contrary, (a) the Association shall not own or operate any non-incidental business, or be licensed as a hotel, motel, resort, or hospitality entity; (b) the Association nor any Governing Document will restrict an Owner's ability to occupy such Owner's Unit during any part of the year, and such Owner may voluntarily choose to enter into such an agreement with third parties upon such terms and conditions as such Owner may agree; (c) the Association nor any Governing Document will require Owners to make their Units available for rental pooling (daily or otherwise), and the Owners may voluntarily choose to enter into such an arrangement with third parties upon such terms and conditions as they may agree; and (d) the Association nor any Governing Document will required the Owners to share profits from the rental of Units with the Association or Master Association, management company, resort or hotel rental company, and the Owners may voluntarily choose to enter into such an arrangement with third parties.

23.5 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, but no more than one per calendar year, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, may obtain an audit, by certified public accountants, of all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

23.6 Effective Date. This Declaration shall take effect upon recording.

23.7 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any Person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Project or the drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions

of the Governing Documents or with the laws, ordinances, regulations, rules or order of any governmental authority.

23.8 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may be leasing, renting or selling under contract such Owner's Unit. The Owner of a Unit within the Project shall have no obligation for expenses or other obligations accruing after such Owner conveys such Unit.

23.9 Incorporation of Recitals and Exhibits. The Recitals set forth at the beginning of this Residential Declaration and all Exhibits attached hereto are hereby incorporated herein by this reference.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the undersigned Declarant has executed this Residential Declaration the day and year first above written.

JOVID MARK RESIDENCES, LLC,  
a Utah limited liability company

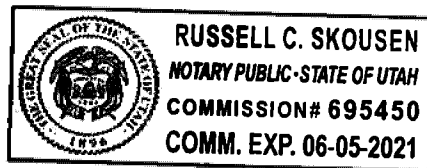
By: [Signature]  
Richard Wolper, its manager

STATE OF UTAH            )  
  )ss.  
COUNTY OF WASATCH )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2020 by Richard Wolper, the manager of Jovid Mark Residences, a Utah limited liability company.

[Signature]  
NOTARY PUBLIC  
Residing at: Utah County, Utah

My Commission Expires:  
6/5/2021



**CONSENT TO RECORD AND SUBORDINATION  
(BRELF II, LLC)**

The undersigned BRELF II, LLC, a Washington limited liability company (“Lender”), is the Lender specified in that certain Promissory Note dated as of May 16, 2019 between the Declarant and the Lender, is the Beneficiary of that certain Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases and Rents, dated as of May 16, 2019, and recorded May 17, 2019, as Entry No. 463691, in Book 1252, Page 807-838, of the Official Records of Wasatch County, Utah (“Deed of Trust”) which constitutes a lien of record against the property subject to the foregoing Declaration. The Lender hereby subordinates the lien and encumbrance of the Deed of Trust to this Declaration and to the rights of the Owners as set forth in such Declaration and consents to the recordation of such Declaration as well as plat the Jovid Mark Subdivision, filed as Entry No. 442839, in Book 1201, beginning at Page 1247; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS 2, 3 AND 4 (1<sup>st</sup> amendment) (PHASE 1), Recorded April 9, 2019 as Document No. 462319; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS AMENDING PARCELS 3 AND 5 (2<sup>nd</sup> amendment) (PHASE 2), Recorded April 10, 2019 as Document No. 462341; JOVID MARK SUBDIVISION, A CONDO PLAT, AMENDING PARCELS AMENDING PARCELS 4 AND 7 (3<sup>rd</sup> amendment) (PHASE 3), Recorded April 10, 2019 as Document No. 462344; duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

LENDER

BRELF II, LLC

By: Broadmark Real Estate Management II, LLC  
Manager of BRELF II, LLC

By: \_\_\_\_\_  
Joanne Van Sickle, its manager

By: \_\_\_\_\_  
Jeffrey B. Pyatt, its manager

STATE OF WASHINGTON )  
 ):  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by JOANNE VAN SICKLE and JEFFREY B. PYATT, the managers of Broadmark Real Estate Management II, LLC, which is the manager of BRELF II, LLC.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:

My Commission Expires:



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**Parcels 3 and 5:**

Units 205, 206, 207, 208, 209, 211, 251, 252, 305, 306, 307, 308, 309, 310, 311, 312, 405, 406, 407, 408, 409, 410, 411, 412, 505, 506, 507, 508, 509, 510, 511, 512, 605, 606, 607, 608, 609, 610, 611 and 612, Jovid Mark Subdivision A Condo Plat Amending Parcels 3 and 5 (2nd amendment) (Phase 2), according to the official plat thereof as recorded in the office of the Wasatch County Recorder.

Together with the Common Area as shown on the official plat recorded April 10, 2019 as Entry No. 462341 in Book 1248 at Page 1662 of Official Records.

**Parcels 3 and 5 Tax Parcel Nos.**

- 00-0021-4105
- 00-0021-4106
- 00-0021-4107
- 00-0021-4108
- 00-0021-4109
- 00-0021-4110
- 00-0021-4111
- 00-0021-4112
- 00-0021-4113
- 00-0021-4114
- 00-0021-4115
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- 00-0021-4117
- 00-0021-4118
- 00-0021-4119
- 00-0021-4120
- 00-0021-4121
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00-0021-4142  
00-0021-4143  
00-0021-4144

**Parcels 4 and 7:**

Units 256, 313, 315, 317, 319, 354, 355, 356, 357, 413, 414, 415, 416, 417, 418, 419, 420, 513, 514, 515, 516, 517, 518, 519, 520, 613, 614, 615, 616, 617, 618, 619 and 620, Jovid Mark Subdivision A Condo Plat Amending Parcels 4 and 7 (3rd amendment) (Phase 3), according to the official plat thereof as recorded in the office of the Wasatch County Recorder.

Together with the Common Area as shown on the official plat recorded April 10, 2019 as Entry No. 462344 in Book 1248 at Page 1768 of Official Records.

**Parcels 4 and 7 Tax Parcel Nos.:**

00-0021-4145  
00-0021-4146  
00-0021-4147  
00-0021-4148  
00-0021-4149  
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00-0021-4170  
00-0021-4171

00-0021-4172  
00-0021-4173  
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00-0021-4175  
00-0021-4176  
00-0021-4177

909 West Peace Tree Trail, Heber City, Utah 84032

**EXHIBIT B****SCHEDULE OF UNITS, SQUARE FOOTAGE, VOTES**

Unit #	Phase	Bldg	Parcel Number	Use	Level	Sq. Ft.	Number of Votes Per Unit/Parcel	Residential Parcel Association
205	Five	5	00-0021-4105	Residential	2	1,160	1,160	Residential
206	Five	5	00-0021-4106	Residential	2	1,160	1,160	Residential
207	Five	5	00-0021-4107	Residential	2	1,160	1,160	Residential
208	Five	5	00-0021-4108	Residential	2	1,160	1,160	Residential
209	Four	3	00-0021-4109	Residential	2	1,160	1,160	Residential
211	Four	3	00-0021-4110	Residential	2	1,160	1,160	Residential
251	Four	3	00-0021-4111	Commercial	2	836	836	Residential
252	Four	3	00-0021-4112	Commercial	2	1,574	1,574	Residential
305	Five	5	00-0021-4113	Residential	3	1,160	1,160	Residential
306	Five	5	00-0021-4114	Residential	3	1,160	1,160	Residential
307	Five	5	00-0021-4115	Residential	3	1,160	1,160	Residential
308	Five	5	00-0021-4116	Residential	3	1,160	1,160	Residential
309	Four	3	00-0021-4117	Residential	3	1,160	1,160	Residential
310	Four	3	00-0021-4118	Residential	3	1,160	1,160	Residential
311	Four	3	00-0021-4119	Residential	3	1,160	1,160	Residential
312	Four	3	00-0021-4120	Residential	3	1,160	1,160	Residential
405	Five	5	00-0021-4121	Residential	4	1,160	1,160	Residential
406	Five	5	00-0021-4122	Residential	4	1,160	1,160	Residential
407	Five	5	00-0021-4123	Residential	4	1,160	1,160	Residential
408	Five	5	00-0021-4124	Residential	4	1,160	1,160	Residential
409	Four	3	00-0021-4125	Residential	4	1,160	1,160	Residential
410	Four	3	00-0021-4126	Residential	4	1,160	1,160	Residential
411	Four	3	00-0021-4127	Residential	4	1,160	1,160	Residential
412	Four	3	00-0021-4128	Residential	4	1,160	1,160	Residential
505	Five	5	00-0021-4129	Residential	5	1,160	1,160	Residential
506	Five	5	00-0021-4130	Residential	5	1,160	1,160	Residential
507	Five	5	00-0021-4131	Residential	5	1,160	1,160	Residential
508	Five	5	00-0021-4132	Residential	5	1,160	1,160	Residential
509	Four	3	00-0021-4133	Residential	5	1,160	1,160	Residential
510	Four	3	00-0021-4134	Residential	5	1,160	1,160	Residential
511	Four	3	00-0021-4135	Residential	5	1,160	1,160	Residential
512	Four	3	00-0021-4136	Residential	5	1,160	1,160	Residential
605	Five	5	00-0021-4137	Residential	6	1,160	1,160	Residential
606	Five	5	00-0021-4138	Residential	6	1,160	1,160	Residential

607	Five	5	00-0021-4139	Residential	6	1,160	1,160	Residential
608	Five	5	00-0021-4140	Residential	6	1,160	1,160	Residential
609	Four	3	00-0021-4141	Residential	6	1,160	1,160	Residential
610	Four	3	00-0021-4142	Residential	6	1,160	1,160	Residential
611	Four	3	00-0021-4143	Residential	6	1,160	1,160	Residential
612	Four	3	00-0021-4144	Residential	6-7	1,990	1,990	Residential
256	Two	4	00-0021-4145	Commercial	2	1,681	1,681	Residential
313	Two	4	00-0021-4146	Residential	3	1,160	1,160	Residential
315	Two	4	00-0021-4147	Residential	3	1,160	1,160	Residential
317	One	7	00-0021-4148	Residential	3	1,160	1,160	Residential
319	One	7	00-0021-4149	Residential	3	1,160	1,160	Residential
354	Two	4	00-0021-4150	Commercial	3	1,267	1,267	Residential
355	Two	4	00-0021-4151	Commercial	3	1,267	1,267	Residential
356	One	7	00-0021-4152	Commercial	3	1,267	1,267	Residential
357	One	7	00-0021-4153	Commercial	3	1,267	1,267	Residential
413	Two	4	00-0021-4154	Residential	4	1,160	1,160	Residential
414	Two	4	00-0021-4155	Residential	4	1,160	1,160	Residential
415	Two	4	00-0021-4156	Residential	4	1,160	1,160	Residential
416	Two	4	00-0021-4157	Residential	4	1,160	1,160	Residential
417	One	7	00-0021-4158	Residential	4	1,160	1,160	Residential
418	One	7	00-0021-4159	Residential	4	1,160	1,160	Residential
419	One	7	00-0021-4160	Residential	4	1,160	1,160	Residential
420	One	7	00-0021-4161	Residential	4	1,160	1,160	Residential
513	Two	4	00-0021-4162	Residential	5	1,160	1,160	Residential
514	Two	4	00-0021-4163	Residential	5	1,160	1,160	Residential
515	Two	4	00-0021-4164	Residential	5	1,160	1,160	Residential
516	Two	4	00-0021-4165	Residential	5	1,160	1,160	Residential
517	One	7	00-0021-4166	Residential	5	1,160	1,160	Residential
518	One	7	00-0021-4167	Residential	5	1,160	1,160	Residential
519	One	7	00-0021-4168	Residential	5	1,160	1,160	Residential
520	One	7	00-0021-4169	Residential	5	1,160	1,160	Residential
613	Two	4	00-0021-4170	Residential	6	1,160	1,160	Residential
614	Two	4	00-0021-4171	Residential	6-7	1,990	1,990	Residential
615	Two	4	00-0021-4172	Residential	6	1,160	1,160	Residential
616	Two	4	00-0021-4173	Residential	6	1,160	1,160	Residential
617	One	7	00-0021-4174	Residential	6	1,160	1,160	Residential
618	One	7	00-0021-4175	Residential	6	1,160	1,160	Residential

619	One	7	00-00214176	Residential	6	1,160	1,160	Residential
620	One	7	00-0021-4177	Residential	6	1,160	1,160	Residential
					<b>Total</b>	<b>87,379</b>	<b>87,379</b>	

<sup>1</sup> May total slightly more or less than 100% due to rounding

**EXHIBIT C**  
**BYLAWS**

**BYLAWS**  
**OF**  
**BLACK ROCK RESIDENTIAL OWNERS ASSOCIATION**

The administration of BLACK ROCK RESIDENTIAL OWNERS ASSOCIATION, a Utah nonprofit corporation (the “Association”) shall be governed by the Act, the Declaration, the Utah Revised Nonprofit Corporation Act (the “Nonprofit Corporation Act”), the Articles and these Bylaws. Terms that are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the DECLARATION OF CONDOMINIUM OF BLACK ROCK RESIDENTIAL CONDOMINIUMS (the “Declaration”), which has been or will be recorded in the Office of the Recorder of Wasatch County, Utah.

1. Application of Bylaws. All present and future Owners, Mortgagees, lessees and occupants of Units and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws and all Rules and Regulations made pursuant thereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit or the occupancy of any Unit, shall constitute an agreement that the provisions of the Declaration and these Bylaws and any Rules and Regulations made pursuant hereto, as they may be amended from time to time, shall constitute an agreement, acceptance, ratification and compliance with the provisions of the Declaration, these Bylaws and any Rules and Regulations made pursuant hereto, as may be amended from time to time. Membership in the Association is appurtenant to each Unit and may not be separated or severed therefrom. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall automatically be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the appurtenant membership in the Association without the need of any separate transfer or assignment document.

2. Association: Membership, Voting and Meetings.

2.1 Members. The Association shall have two classes of Membership, Class A Members and Class B Members. Each Owner of a Unit, other than Declarant or Declarant Affiliates, shall be a Class A Member of the Association. The Declarant or Declarant Affiliates shall be Class B Members in the Association until the expiration of the Period of Declarant Control described in the Declaration.

2.2 Voting. Each Member shall be entitled to the following voting rights, calculated based on the Membership type (Class A or Class B) pursuant to the Governing Documents:

2.2.1 Class A Members. Until the expiration of the Period of Declarant Control, the Class A membership will be non-voting, except as described in the Declaration. After the expiration of the Period of Declarant Control, each Class A Member shall be entitled to one (1) vote per Unit square foot, subject to the authority of the Management Committee to suspend the voting rights of the Class A Member for violations of the Master Declaration or the Declaration in accordance with the provisions thereof.



2.2.2 Class B Members. Until the expiration of the Period of Declarant Control, the Class B membership will be voting and will entitle the Class B Member to one (1) controlling vote on all Association member matters. Upon expiration of the Period of Declarant Control, each Class B Member shall be deemed to be a Class A Member as to the Units owned at such time.

After the expiration of the Period of Declarant Control, any provision requiring the vote or approval of the members of the Association shall be approved by a simple majority of all Class A Member votes present in person or by proxy at a meeting of the Class A Members at which a quorum is present in person or by proxy, unless a greater than simple majority of the membership is specified as being required in the Articles, the Declaration or Bylaws, in which case the greater percentage vote of the membership is obtained in a meeting of the Class A Members at which a quorum is present in person or by proxy.

2.3 Membership and Ownership Rights. Each Member and each Owner shall have the respective rights, duties and obligations set forth in the Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time.

2.4 Annual Meeting. The first meeting of the Association shall be held within one year after the closing of the sale of the first Unit sold in the Project. Thereafter, there shall be an annual meeting of the Association on the first Thursday of each November at 6:00 p.m. at a reasonable place at the Project, or some other reasonable location in Summit or Wasatch County unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Members, or at such other reasonable time not more than sixty (60) days before or after such date as may be designated by written notice by the Management Committee. Notice of the annual meeting shall be delivered to the Members postage prepaid at least ten (10) days prior to the date set for said meeting and shall specify the place, day and hour of the meeting and a brief statement of the matters on the agenda which the Management Committee intends to present or believes others will present for action by the Members. Such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association or to any other address designated in writing by the Member, including email address. Written notice of the time, day, and place of regular Member meetings shall be posted at a prominent place or places, including electronic postings and places, within the Project.

2.5 Special Meetings. Special meetings of the Association may be called by the Declarant, the President, a majority of the Management Committee, or, following the Period of Declarant Control, Members representing at least twenty-five percent (25%) or more of the votes of the total Class A votes of the Association. Special meetings may be held at a reasonable place at Project, or some other reasonable location in Summit or Wasatch County unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Members, to consider matters which, by the terms of these Bylaws, require the approval of all or some of the Members or for any other reasonable purpose. Notice of the special meeting shall be hand delivered or sent prepaid by United States mail, at least ten (10) days prior to the date fixed for said meeting, to

each Member at such Member's address as shown in the records of the Association or to any other mailing address designated in writing by the Member. Such notice shall specify the place, day and hour of the meeting and a brief statement of the items on the agenda, including the general nature of any proposed amendment to these Bylaws, any budgetary changes and any proposal to remove an officer or member of the Management Committee. Written notice of the time, day, and place of special Member meetings shall be posted at a prominent place or places within Project.

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

2.7 Quorum and Adjournment. The presence in person of Members representing a majority of the total votes in the Association at any meeting of the Association held in response to notice to all Members of record properly given shall constitute a quorum. In the absence of a quorum at an Association meeting, a majority of those present in person may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall be ten percent (10%) of the votes of the Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings of the Association.

2.8 Business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, regardless of whether the twenty-five percent (25%) of the total Class A votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.9 Proxies. Members may vote by proxy.

2.10 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. Robert's Rules of order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with these Bylaws.

2.11 Minutes. Minutes of the annual and special meetings of the Association shall be made available to each Member within sixty (60) days after the meeting.

2.12 Action without Meeting. Any action required or permitted by the Act to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all of the Members entitled to vote with respect to the subject matter thereof. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a unanimous vote of the Members.

2.13 Majority Vote. As used in these Bylaws, the term "majority" shall mean those votes, Members, or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number. The vote of a majority of the Members present in person at a meeting at which a quorum shall be present shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Act or by other applicable Utah law.

### 3. Board of Directors/ Management Committee

3.1 Management Committee. The management and maintenance of the Project and the duty to administer the affairs of the Association to fulfill the purposes of the Association shall be accomplished and conducted by the Board of Directors of the Association, who shall constitute the Management Committee, consisting of not less than three (3) nor more than seven (7) natural persons (odd numbered totals only), who shall be Members, unless such persons are otherwise qualified, as provided in Section 3.16 hereof, or unless such persons are appointed by Declarant during the Period of Declarant Control. The first Management Committee shall consist of the members of the Board of Directors designated as such following the filing of the Articles, and they shall serve until the first meeting of the members of the Association, at which time an election of all the members of the Management Committee shall be conducted.

3.2 Period of Declarant Control. The Declaration establishes a Period of Declarant Control of the Association, during which Period of Declarant Control Declarant shall have the sole authority to appoint and remove the officers and members of the Management Committee, such officers and members need not be Owners. The Period of Declarant Control shall terminate on the earlier of: (a) six (6) years after the first Unit is conveyed to an Owner; (b)(i) after Units to which three-fourths (3/4) of the undivided interest in the Common Elements appertain have been conveyed to Owners, or (ii) after all Additional Land has been added to the Project and all convertible land (if any) has been converted, whichever of (b)(i) or (b)(ii) of this subparagraph occurs last; or (c) the surrender by Declarant of such right by written notice to the Management Committee.

3.3 After Period of Declarant Control. At the next annual meeting of the members of the Association after the termination of the Period of Declarant Control, the Owners shall elect a Management Committee. The Owners of Commercial Units shall

have the perpetual right to appoint up to (a) 2 members of a Management Committee consisting of 3 members, (b) 3 members of a Management Committee consisting of 5 members, and (c) 4 members of a Management Committee consisting of 7 members. The Owners of the Residential Units shall have the perpetual right to appoint up to (a) 1 member of a Management Committee consisting of 3 members, (b) 2 members of a Management Committee consisting of 5 members, and (c) 3 members of a Management Committee consisting of 7 members. The members and officers of the Management Committee shall take office upon election. Thereafter, at every annual meeting, the Association shall elect the members of the Management Committee to fill those positions becoming vacant at such meeting. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. Nominations for positions on the Management Committee may be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, indicating his/her willingness to serve as a member of the Management Committee, if elected.

3.4 Election and Term of Office. Voting for the Management Committee shall be by written and/or electronic ballot. At any meeting of the Association, each Owner, either in person or by proxy or by written ballot, shall be entitled to the number of votes set forth in Section 2.2.1. Cumulative voting shall not be allowed. In an election of multiple Directors/members of the Management Committee, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, are elected to the Board of Directors/Management Committee. When only one Director is being voted upon, the candidate having the highest number of votes cast in his/her favor is elected. Prior to the termination of the Period of Declarant Control, the Declarant shall be entitled to appoint all members of the Management Committee. After the Period of Declarant Control, members of the Management Committee shall serve for terms of two (2) years beginning immediately upon their election by the Association; provided, however, that two-thirds (2/3) of the members of the Management Committee elected at the first annual meeting following the termination of Period of Declarant Control shall serve for initial terms of two (2) years and the balance shall serve for initial terms of one (1) year. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Management Committee who fails to attend three consecutive Management Committee meetings or fails to attend at least twenty five percent (25%) of the Management Committee meetings held during any fiscal year shall be deemed to have tendered his/her resignation, and upon acceptance by the Management Committee his/her position shall be vacant.

3.5 Resignation. Any member of the Management Committee may resign at any time by giving written notice to the President of the Association or to the remaining Management Committee members. The sale of any such member's Unit or Units resulting in that member no longer owning a Unit in the Project shall constitute a resignation from the Management Committee. Following the Period of Declarant Control, the Class A Members, by at least a sixty-seven percent (67%) vote of all Class A Members present and entitled to vote at any meeting of the Class A Members at which a quorum is present, may remove any member of the Management Committee with or without cause.

3.6 Vacancies. If vacancies occur in the Management Committee by reason of the death or resignation of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election at the meeting at which such Management Committee member is removed or any subsequent regular or special meeting of the Association.

3.7 Compensation. The members of the Management Committee shall receive no compensation for their services, unless expressly approved by the vote or written assent of at least sixty-seven percent (67%) of Total Votes of the Association. Any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all members of the Management Committee not including the member to be employed.

3.8 Consecutive Terms. A Management Committee Member may be elected to serve a maximum of three consecutive terms, after which a Member will be required to take a minimum of one (1) year off before being eligible to hold office again.

3.9 Powers and Duties. The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Declaration, these Bylaws and the Rules and Regulations governing the Project. The Management Committee is authorized to adopt Rules and Regulations governing the use and operation of the Project, which shall become effective thirty (30) days after adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Act, the Nonprofit Corporation Act, the Declaration, the Articles and these Bylaws.

3.10 Annual Meetings. The meetings of the Management Committee shall be held at least once each calendar quarter at such times and places within the Project, or some other reasonable and suitable location in Summit or Wasatch County, Utah, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to Management Committee members, as the Management Committee shall determine. A majority of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The election of officers shall be conducted at the first meeting of the Management Committee held subsequent to the annual meeting of the Association.

3.11 Notice. Notices of all regular Management Committee meetings shall be given in writing via regular or electronic mail to each member of the Management Committee. If notice of such meeting is given by first class or registered mail, then such notice shall be given not less than ten (10) days prior to the meeting; however, if such meeting is given by means other than first class or registered mail (i.e. electronically

transmitted facsimile or other form of wire or wireless communication) then the notice shall be given no fewer than five (5) days, nor more than sixty (60) days prior to the meeting. The foregoing notice requirements shall not apply to any member of the Management Committee who has signed a waiver of notice or a written consent to the holding of a meeting. Special meetings of the Management Committee must be preceded by two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by Utah law. The giving of notice of any meeting shall be governed by the rules set forth in Section 16-6a-103 of the Nonprofit Act.

3.12 Open Meetings. Regular and special meetings of the Management Committee shall be open to all members of the Association; provided, however, that the Association members who are not on the Management Committee may not participate in any deliberation or discussion, unless expressly so authorized by the vote of a majority of a quorum of the Management Committee. The Management Committee may, with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. Management Committee members may participate in meetings by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Utah law. Such participation shall constitute presence in person at the meeting.

3.13 Action without Meeting. Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Management Committee members and such signed consents are filed with the records of the Association. Such written consent may be received by the Association by electronically transmitted facsimile or other form of wire or wireless communication. Such consent shall have the same force and effect as a unanimous vote.

3.14 Fiscal Year. The Association's fiscal year shall be determined by the Management Committee.

3.15 Indemnification. When a member of the Management Committee is sued for liability for actions undertaken in his/her role as a member of the Management Committee, the Association shall indemnify him/her for his/her losses or claims, and undertake all costs of defense, until and unless it is proven that (s)he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victim of crimes occurring at the Project. Punitive damages may not be recovered against the Association.

3.16 Owner Designation. An officer, employee, agent, manager, member or director of a corporate or limited liability company Owner of a Unit, a trustee or designated beneficiary of a trust respecting a Unit held in trust, a partner of a partnership that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered an Owner for the purpose of determining eligibility for membership of the Management Committee. In all events where the person serving or offering to serve as an officer or member of the Management Committee is not the record Owner, they shall file proof of authority in the records of the Association.

3.17 Delegation. The Management Committee or the officers appointed thereby may delegate to the Manager, or such other persons as it so determines, all of the duties and obligations of the Management Committee set forth herein and in the Declaration to the extent such duties and obligations are properly delegable.

#### 4. Officers.

4.1 Designation. The officers of the Association shall be appointed by the Management Committee, and all officers and employees of the Association shall serve at the will of the Management Committee. The officers shall be a President, Secretary and Treasurer. The offices of Secretary and Treasurer may be combined in the discretion of the Management Committee. The Management Committee may appoint Vice President(s) and such other assistant officers as the Management Committee may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 President. The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. The President shall sign, and the Secretary shall witness on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. The President shall do and perform all acts which the Management Committee may require.

4.3 Vice President. The First Vice President, if any, shall perform the functions of the President in his/her absence or inability to serve. The Second Vice President, if any, shall perform such duties in absence or invalidity of the President and First Vice President.

4.4 Secretary. The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Management Committee.

4.5 Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Association but may delegate the daily handling of funds and the keeping of records to the Manager. If there are no Vice Presidents and the President is absent or unable to serve, then the Treasurer shall perform the functions of the President. The offices of Secretary and Treasurer may be combined when the Management Committee consists of three (3) members.

4.6 Instruments. Any officer may prepare, execute, certify, and record properly adopted amendments to the Declaration on behalf of the Association, following approval of such amendments pursuant to the terms of the Declaration and these Bylaws.

5. Common Expenses; Assessments.

5.1 Payment. All Assessments shall be made and Common Expenses shall be paid in accordance with the Declaration.

5.2 No Exemption. No Owner shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his/her Unit, except as set forth in the Declaration.

5.3 Records. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Management Committee in assessing Common Expenses against the Units, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

5.4 Enforcement. All Assessments shall be a separate, distinct and personal liability of the Owners at the time each Assessment is made. The Management Committee shall have the rights and remedies contained in the Act, the Declaration and applicable law, to enforce the collection of Assessments.

5.5 Assessment Information Request. Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee and/or the Manager, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic Assessment and the amount of unpaid Assessments charged against such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon, provided that the former Owner shall remain so liable for the excess. Any such excess which cannot be promptly collected from the former Owner shall be reassessed by the Management Committee as a Common Expense to be collected from all Owners, including without limitation, the purchaser of such Unit, his/her successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the



Management Committee for which the assessment is made relate in whole or in part to any period prior to that date. The Management Committee and/or the Manager are authorized to require a reasonable fee for furnishing such statements.

5.6 Common Expense Information Request. In addition to the statements issuable to purchasers, the Management Committee and/or the Manager shall, upon ten (10) days prior written request therefor, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Unit, and to any Mortgagee, on request at reasonable intervals, a current statement of unpaid assessments for Common Expenses with respect to a Unit. The Management Committee and/or the Manager are authorized to require a reasonable fee for furnishing such statements.

5.7 Reassessment. In all cases where all or part of any assessments for Common Expenses and capital contributions and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Management Committee shall reassess the same as a Common Expense without prejudice to its rights of collection against such persons or entities, or without prejudice to its lien for such assessments.

## 6. Litigation.

6.1 Litigation Expenses. If any action, including mediation and arbitration, is brought by a member of the Management Committee on behalf of the Association, the expenses of suit, including reasonable attorneys' fees and costs, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners or against the Management Committee or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees and costs, shall be a Common Expense. If any action is brought against one or more, but less than all, Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

6.2 Defense of Action. Except as otherwise provided by the Act, any action brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee and shall be defended by the Management Committee, and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Management Committee, and shall be defended by such Owners.

7. Abatement and Enjoinment of Violations by Owners. The violation of any rules or regulations adopted by the Management Committee, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the

defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. These remedies are cumulative to other remedies provided in the Declaration and these Bylaws, the Act or in any other applicable laws.

## 8. Records and Accounting.

8.1 Books and Accounts. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

8.2 Budget. A budget for each fiscal year consisting of at least the following information shall be adopted by the Management Committee and made available to all members of the Association not less than thirty (30) days and not more than sixty (60) days prior to the beginning of the fiscal year to which the budget applies:

8.2.1 Estimated revenue and expenses on an accrual basis.

8.2.2 The amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Elements of the Project and for contingencies.

8.2.3 An itemized estimate of the current replacement costs of, and the estimated remaining life of, and the methods of funding to defray the costs of future repair, replacement or additions to the major components of the Common Elements for which the Association is responsible.

8.2.4 A general statement setting forth the procedures used by the Management Committee in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Elements for which the Association is responsible.

Unless the Association, by a majority of the Total Votes of the Association at the meeting of the Association held after completion of the proposed budget, rejects the budget, the budget shall be deemed ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Management Committee.

8.3 Annual Report. The Management Committee shall make available to the Owners an annual report, consisting of the following, within one hundred fifty (150) days after the close of each fiscal year:

8.3.1 A balance sheet as of the end of the fiscal year.

8.3.2 An operating (income) statement for the fiscal year.

8.3.3 A statement of changes in financial position for the fiscal year.

8.3.4 Any other disclosures required by applicable state law.

8.4 Review. The Management Committee (or the Manager, if so delegated by the Management Committee) shall do the following not less frequently than twice a year:

8.4.1 Cause a current reconciliation of the Association's operating accounts to be made and review the same.

8.4.2 Cause a current reconciliation of the Association's reserve account to be made and review the same.

8.4.3 Review the current year's actual reserve revenues and expenses compared to the current year's budget.

8.4.4 Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

8.4.5 Review an income and expense statement for the Association's operating and reserve accounts.

8.5 Availability of Documents. A copy of the Declaration, the Articles, these Bylaws, the rules and regulations adopted by the Management Committee, the membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project maintained by the Association, Manager, or managing company (other than privileged or confidential information) shall be made available for inspection and copying by any member of the Association or his/her duly appointed representative, including a First Mortgagee, upon appointment and at his own expense and for a purpose reasonably related to his/her interest as an Owner, at the office where the records are maintained. Additionally, at the request of a First Mortgagee, and upon payment of the cost thereof, the Management Committee shall prepare and furnish such Mortgagee, within a reasonable time, an audited financial statement, if available, of the Association for the immediately preceding fiscal year. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Management Committee to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Association may, as a condition to permitting an Owner to inspect the membership register or to its furnishing information from the register, require that the Owner agree in writing not to use, or allow the use, of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Management Committee shall establish reasonable rules with respect to:

8.5.1 Notice to be given to the custodian of the records, in accordance with Utah law, by the Owner desiring to make the inspection or obtain copies:

8.5.2 Hours and days of the week when such an inspection may be made;  
and

8.5.3 Payment of the cost of reproducing copies of documents requested by an Owner.

Every member of the Management Committee shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Management Committee member agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purpose not reasonably related to the business of the Association and the Management Committee member's interest in the Association.

9. Special Committees. The Management Committee by resolution may designate one or more special committees, each committee to consist of one (1) or more of the members of the Management Committee, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. All special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the President. The Management Committee or the President may appoint Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. Rental or Lease of Units by Owners.

10.1 Any Owner who rents or leases or otherwise permits any other person to utilize his/her Unit shall be responsible for the conduct of his/her tenants or occupants, and upon written notice from the Management Committee or the Manager, said Owner shall be responsible for correcting violations of the Declaration, Bylaws or Rules and Regulations committed by such tenants or occupants.

10.2 If an Owner fails to correct violations by tenants within twenty-four (24) hours of such notice, the Management Committee or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to, fees and costs paid to third parties to be assessed to the Owner and payable within thirty (30) days of assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Declaration.

10.3 The power of the Management Committee or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting, leasing or otherwise permitting any other person to utilize such Owner's Unit shall be deemed to have consented to these procedures and

shall indemnify and save harmless the Management Committee and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Manager shall include, but not be limited to, the right to seek eviction of the tenant without any liability to the Owner.

11. Amendment of Bylaws.

11.1 By Declarant. Prior to the conveyance of the first Unit by Declarant to an Owner, other than Declarant or Declarant Affiliate, the Declarant may unilaterally amend these Bylaws. After such conveyance, and notwithstanding anything contained in these Bylaws to the contrary, these Bylaws may be amended unilaterally at any time and from time to time by Declarant if such amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Parcels, Units, Residential Structures or Improvements subject to the Declaration or Master Declaration; provided, however, any such amendment shall not materially adversely affect the title to any Parcel, Unit, Residential Structure or Improvement unless any such Owner shall consent thereto in writing. Further, so long as the Declarant's Class B Membership in the Association exists, Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

11.2 By Members. Except as otherwise provided in the Act, the Declaration, these Bylaws or applicable law, these Bylaws may be amended by the vote or written consent of Owners representing sixty-seven percent (67%) of the total votes in the Association, and the written consent of the Declarant, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Notwithstanding the foregoing, any amendment which shall modify the rights granted to Mortgagees under Article XVIII of the Declaration shall require the vote or written assent of sixty-seven percent (67%) of all Eligible Mortgagees.

11.3 Validity and Effective Date of Amendment. Upon the necessary affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote, and the amendment shall be effective upon recording a copy of the amendment in the Office of the Recorder of Wasatch County, Utah, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. No amendment may remove, revoke, or modify any right or privilege of Declarant without the express written consent of all Declarants or the successor of such right or privilege.

12. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of anyone provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

13. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

14. Effective Date. These Bylaws shall take effect upon adoption by the Management Committee.

15. Waiver. The failure of the Management Committee to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by the Management Committee.

## EXHIBIT D

### ARBITRATION PROVISIONS

1. Dispute Resolution. The Bound Parties hereby agree that the arbitration provisions set forth in this Exhibit D (“**Arbitration Provisions**”) are binding on each of them. As a result, any attempt to rescind or declare these Arbitration Provisions invalid or unenforceable for any reason is subject to these Arbitration Provisions.

2. Arbitration. Any Claim must be submitted to arbitration (“**Arbitration**”) to be conducted exclusively in Salt Lake County, Utah and pursuant to the terms set forth in these Arbitration Provisions. The Bound Parties agree that the award of the arbitrator rendered pursuant to Paragraph 4 below (the “**Arbitration Award**”) shall be (a) final and binding upon the Bound Parties, (b) the sole and exclusive remedy between them regarding any Claim, claims, counterclaims, issues, or accountings presented or pleaded to the arbitrator, and (c) promptly payable in United States dollars free of any tax, deduction, or offset (with respect to monetary awards). Any costs or fees, including without limitation attorneys’ fees, incurred in connection with or incident to enforcing the Arbitration Award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. Judgment upon the Arbitration Award may be entered and enforced by any state or federal court sitting in Wasatch County, Utah.

3. The Arbitration Act. The Bound Parties hereby incorporate herein the provisions and procedures set forth in the Utah Uniform Arbitration Act, U.C.A. § 78B-11-101 *et seq.* (as amended or superseded from time to time, the “**Arbitration Act**”). Notwithstanding the foregoing, pursuant to, and to the maximum extent permitted by, Section 105 of the Arbitration Act, in the event of conflict or variation between the terms of these Arbitration Provisions and the provisions of the Arbitration Act, the terms of these Arbitration Provisions shall control and the Bound Parties hereby waive or otherwise agree to vary the effect of all requirements of the Arbitration Act that may conflict with or vary from these Arbitration Provisions.

4. Arbitration Proceedings. Arbitration between Bound Parties will be subject to the following:

4.1 *Initiation of Arbitration*. The Bound Parties agree that any of the Bound Parties (the “**Petitioner**”) may initiate Arbitration (“**Petitioner**”) by giving written notice (the “**Arbitration Notice**”) to one or more of any of the other Bound Parties (collectively, “**Respondent**”) using any method of service authorized for the commencement of a civil action under the Utah Rules of Civil Procedure (“**Service**”). The Arbitration Notice must describe the nature of the controversy, the identity of the Respondent, the remedies sought, and the election to commence Arbitration proceedings. All Claims in the Arbitration Notice must be pleaded consistent with the Utah Rules of Civil Procedure.

#### 4.2 *Selection and Payment of Arbitrator.*

(a) Petitioner and Respondent shall make good faith efforts to agree on an arbitrator from the roster of arbitrators maintained by Utah ADR Services (<http://www.utahadrservices.com>). If the Petitioner and Respondent cannot agree to an arbitrator, Petitioner or Respondent may seek the appointment of an arbitrator by filing an action in the Fourth Judicial District Court of Utah sitting in Wasatch County and requesting via a motion that the court appoint an arbitrator.

(b) The date that an arbitrator is selected or appointed pursuant to this Paragraph 4.2 and agrees in a writing (including via email) to serve as the arbitrator hereunder is referred to herein as the “**Arbitration Commencement Date.**” If an arbitrator resigns or is unable to act during the Arbitration, a replacement arbitrator shall be chosen in accordance with this Paragraph 4.2 to continue the Arbitration. If Utah ADR Services ceases to exist or to provide a list of neutrals or qualified arbitrators, then the arbitrator shall be selected under the then prevailing rules of the American Arbitration Association.

(c) The cost of the arbitrator must be paid equally by the parties to the Arbitration.

4.3 *Applicability of Certain Utah Rules.* The Bound Parties agree that the Arbitration shall be conducted generally in accordance with the Utah Rules of Civil Procedure and the Utah Rules of Evidence. More specifically, the Utah Rules of Civil Procedure shall apply, without limitation, to the filing of any pleadings, motions, or memoranda, the conducting of discovery, and the taking of any depositions. The Utah Rules of Evidence shall apply to any hearings, whether telephonic or in person, held by the arbitrator. Notwithstanding the foregoing, it is the Bound Parties’ intent that the incorporation of such rules will in no event supersede these Arbitration Provisions. In the event of any conflict between the Utah Rules of Civil Procedure or the Utah Rules of Evidence and these Arbitration Provisions, these Arbitration Provisions shall control.

4.4 *Answer and Default.* The Respondent shall deliver to the arbitrator and all parties to the Arbitration an answer and any counterclaims or crossclaims related to the Arbitration Notice within twenty (20) calendar days after the Arbitration Commencement Date.

4.5 *Discovery.* The Bound Parties agree that discovery shall be conducted as follows:

(a) Written discovery will only be allowed if the likely benefits of the proposed written discovery outweigh the burden or expense thereof, and the written discovery sought is likely to reveal information that will satisfy a specific element of a claim or defense already pleaded in the Arbitration. The party seeking written discovery shall always have the burden of showing that all of the standards and limitations set forth in these Arbitration Provisions are satisfied.

(b) No party shall be allowed (i) more than fifteen (15) interrogatories (including discrete subparts), (ii) more than fifteen (15) requests for admission (including discrete subparts), (iii) more than ten (10) document requests (including discrete subparts), or (iv) more than three (3) depositions (excluding expert depositions) for a maximum of seven (7) hours per deposition. The costs associated with depositions will be borne by the party taking the deposition. Further, the party defending the deposition will submit a notice to the party taking the deposition of the



estimated attorneys' fees that such party expects to incur in connection with defending the deposition. If the party defending the deposition fails to submit an estimate of attorneys' fees within five (5) calendar days of its receipt of a deposition notice, then such party shall be deemed to have waived its right to the estimated attorneys' fees. The party taking the deposition must pay the party defending the deposition the estimated attorneys' fees prior to taking the deposition, unless such obligation is deemed to be waived as set forth in the immediately preceding sentence. If the party taking the deposition believes that the estimated attorneys' fees are unreasonable, such party may submit the issue to the arbitrator for a decision. All depositions of Bound Parties will be taken in Wasatch County, Utah.

(c) All discovery requests (including document production requests included in deposition notices) must be submitted in writing to the arbitrator and the other party. The party submitting the written discovery requests must include with such discovery requests a detailed explanation of how the proposed discovery requests satisfy the requirements of these Arbitration Provisions and the Utah Rules of Civil Procedure. The receiving party will then be allowed, within five (5) calendar days of receiving the proposed discovery requests, to submit to the arbitrator an estimate of the attorneys' fees and costs associated with responding to such written discovery requests and a written challenge to each applicable discovery request. After receipt of an estimate of attorneys' fees and costs and/or challenge(s) to one or more discovery requests, the arbitrator will within three (3) calendar days make a finding as to the likely attorneys' fees and costs associated with responding to the discovery requests and issue an order that (i) requires the requesting party to prepay the attorneys' fees and costs associated with responding to the discovery requests, and (ii) requires the responding party to respond to the discovery requests as limited by the arbitrator within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. If a party entitled to submit an estimate of attorneys' fees and costs and/or a challenge to discovery requests fails to do so within such 5-day period, the arbitrator will make a finding that (A) there are no attorneys' fees or costs associated with responding to such discovery requests, and (B) the responding party must respond to such discovery requests (as may be limited by the arbitrator) within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. Any party submitting any written discovery requests to another party, including without limitation interrogatories, requests for production, or requests for admissions, must prepay the estimated attorneys' fees and costs, before the responding party has any obligation to produce or respond to the same, unless such obligation is deemed waived as set forth above.

(d) In order to allow a written discovery request, the arbitrator must find that the discovery request satisfies the standards set forth in these Arbitration Provisions and the Utah Rules of Civil Procedure. The arbitrator must strictly enforce these standards. If a discovery request does not satisfy any of the standards set forth in these Arbitration Provisions or the Utah Rules of Civil Procedure, the arbitrator may modify such discovery request to satisfy the applicable standards, or strike such discovery request in whole or in part.

(e) Each party may submit expert reports (and rebuttals thereto), provided that such reports must be submitted within sixty (60) days of the Arbitration Commencement Date. Each party will be allowed a maximum of two (2) experts unless the arbitrator orders otherwise. Expert reports must contain the following: (i) a complete statement of all opinions the expert will offer at any hearing or arbitration and the basis and reasons for them; (ii) the expert's name and qualifications, including a list of all the expert's publications within the preceding ten (10) years, and a list of any other cases in which the expert has testified at trial, hearing, arbitration, or in a

deposition or prepared a report within the preceding ten (10) years; and (iii) the compensation to be paid for the expert's report and testimony. The Bound Parties are entitled to depose any other party's expert witness one (1) time for no more than four (4) hours. An expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the expert report.

4.6 *Dispositive Motions.* Each party shall have the right to submit dispositive motions pursuant to the Utah Rules of Civil Procedure (a "**Dispositive Motion**"). Within seven (7) calendar days of delivery of the Dispositive Motion the other party shall deliver to the arbitrator and to the other party a memorandum in opposition to the Dispositive Motion (the "**Memorandum in Opposition**"). Within seven (7) calendar days of delivery of the Memorandum in Opposition, as applicable, the party that submitted the Dispositive Motion shall deliver to the arbitrator and to the other party a reply memorandum to the Memorandum in Opposition ("**Reply Memorandum**"). If the applicable party shall fail to deliver the Memorandum in Opposition as required above, or if the other party fails to deliver the Reply Memorandum as required above, then the applicable party shall lose its right to so deliver the same, and the Dispositive Motion shall proceed regardless.

4.7 *Confidentiality.* All information disclosed by any party (or such party's agents) during the Arbitration process (including without limitation information disclosed during the discovery process) shall be considered confidential in nature. Each party agrees not to disclose any confidential information received from the other party (or its agents) during the Arbitration process (including without limitation during the discovery process) unless (a) prior to or after the time of disclosure such information becomes public knowledge or part of the public domain, not as a result of any inaction or action of the receiving party or its agents, (b) such information is required by a court order, subpoena, or similar legal obligation to be disclosed if such receiving party has notified the other party thereof in writing and given it a reasonable opportunity to obtain a protective order from a court of competent jurisdiction prior to disclosure, or (c) such information is disclosed to the receiving party's agents, representatives, and legal counsel on a need to know basis who each agree in writing not to disclose such information to any third party. The arbitrator is hereby authorized and directed to issue a protective order to prevent the disclosure of privileged information and confidential information upon the written request of any party.

4.8 *Authorization; Timing; Scheduling Order.* Subject to all other portions of these Arbitration Provisions, the Bound Parties hereby authorize and direct the arbitrator to take such actions and make such rulings as may be necessary to carry out the Bound Parties' intent for the Arbitration proceedings to be efficient and expeditious. The Bound Parties hereby agree that an Arbitration Award must be made within one hundred eighty (180) calendar days after the Arbitration Commencement Date, unless the arbitrator, for good cause, extends this deadline. The arbitrator shall not, however, extend the deadline to issue an Arbitration Award to more than five-hundred and forty (540) calendar days after the Arbitration Commencement Date. The arbitrator is hereby authorized and directed to hold a scheduling conference within ten (10) calendar days after the Arbitration Commencement Date in order to establish a scheduling order with various binding deadlines for hearings, discovery, expert testimony, and the submission of documents by the Bound Parties to enable the arbitrator to render a decision prior to the end of such 180-day period.

4.9 *Relief*. The arbitrator shall have the right to award or include in the Arbitration Award (or in a preliminary ruling) any relief which the arbitrator deems proper under the circumstances, including, without limitation, specific performance and injunctive relief, provided that the arbitrator may not award exemplary or punitive damages.

4.10 *Fees and Costs*. As part of the Arbitration Award, the arbitrator is hereby directed to require the losing party to (a) pay the full amount of any unpaid costs and fees of the Arbitration, and (b) reimburse the prevailing party for all reasonable attorneys' fees, arbitrator costs and fees, deposition costs, other discovery costs, and other expenses, costs, or fees paid or otherwise incurred by the prevailing party in connection with the Arbitration.

## 5. Miscellaneous.

5.1 *Severability*. If any part of these Arbitration Provisions is found to violate or be illegal under applicable law, then such provision shall be modified to the minimum extent necessary to make such provision enforceable under applicable law, and the remainder of the Arbitration Provisions shall remain unaffected and in full force and effect.

5.2 *Governing Law*. These Arbitration Provisions shall be governed by the laws of the State of Utah without regard to the conflict of laws principles therein.

5.3 *Interpretation*. The headings of these Arbitration Provisions are for convenience of reference only and shall not form part of, or affect the interpretation of, these Arbitration Provisions.

5.4 *Waiver*. No waiver of any provision of these Arbitration Provisions shall be effective unless it is in the form of a writing signed by the party granting the waiver.

**EXHIBIT E**  
**ADDITIONAL LAND**

**EXPANSION PARCELS**

Unit #	Subdivision	Parcel Number	Use	Level	Sq. Ft.	Number of Votes Per Unit/Parcel	Residential Parcel Association
BLDG/PARCEL 6	JOVID MARK SUBDIVISION	00-0021-2650					Residential
BLDG/PARCEL 8	JOVID MARK SUBDIVISION	00-0021-2653					Residential
BLDG/PARCEL 9	JOVID MARK SUBDIVISION	00-0021-2654					Residential
BLDG/PARCEL 10	JOVID MARK SUBDIVISION	00-0021-2655					Residential
BLDG/PARCEL 11	JOVID MARK SUBDIVISION	00-0021-2656					Residential
BLDG/PARCEL 12	JOVID MARK SUBDIVISION	00-0021-2657					Residential

**Parcel 6 legal**

Beginning at a point that is N 00°44'47" W 526.67 feet and East 1,141.32 feet from the West ¼ Corner of Section 2 South, Range 5 East, Salt Lake Base and Meridian, and running thence N 66°06'23" W 73.56 feet, thence N 44°35'08" W 30.83 feet, thence N 23°53'38" E 41.37 feet, thence N 66°06'25" W 19.86 feet, thence N 23°53'35" E 20.67 feet, thence S 66°06'25" E 21.92 feet, thence N 23°53'35" E 15.80, thence S 66°07'48" E 114.18 feet, thence S 23°53'55" W 27.42 feet, thence N 66°05'23" W 13.99 feet, thence S 23°53'35" W 61.77 feet to the point of beginning. Parcel contains 0.22 ac.

**Parcels 8-12 legal**

Beginning at a point that is N 00°44'47" W 306.47 feet and East 1,521.72 feet from the West ¼ Corner of Section 2 South, Range 5 East, Salt Lake Base and Meridian, and running thence N 23°53'35" E 53.56 feet, thence N 66°06'25" W 9.98 feet, thence N 23°53'35" E 35.63 feet, S 66°03'47 E 88.19 feet, thence S 36°03'59" E 92.63 feet, thence S 00°00'38" W 161.04 feet, thence S 89°58'18" E 6.65 feet, thence S 00°03'02" W 172.72 feet, thence N 89°59'43" E 28.23 feet, thence S 00°00'17" E 172.38 feet, thence S 34°52'02" W 24.70 feet, thence S 89°59'40 " W 75.04 feet, thence N 00°00'17" W 117.76 feet, thence N 58°14'40" E 6.77 feet, thence N 17°19'40" W 19.34 feet, thence N 00°00'17" W 84.46 feet, thence N 46°03'28" W 40.41 feet, thence N 00°43'28" E 92.52 feet, thence S 89°59'43" W 6.79 feet, thence N 00°00'43" E 174.35 feet, thence N 66°06'22" W 79.82 feet to the point of beginning. Parcel contains 1.29 ac.