



**11th AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF THE  
HEATHER PARK CONDOMINIUM PROJECT**

This amendment is made and entered into this 22 day of August, 2023, by the Management Committee of the Heather Park Homeowners' Association, pursuant to the affirmative votes in elections of the Unit Owners representing more than 65%, of the Unit Owners in one election, with 11 unit owners signing the approval at the meeting, and three emailing their votes, after the meeting. The voting took place on April 5, 2023. All votes were turned in by April 18, 2023, with over 65% of the Unit Owners approving the account set-up and recording fee to be paid by the new buyers of our condominiums at the amount of \$375.00.

ENT 55002:2023 PG 1 of 27  
**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
2023 Aug 22 12:06 PM FEE 52.00 BY NC  
RECORDED FOR HEATHER PARK HOA

**RECITALS**

A. The Heather Park Condominium Project (the "Project") was created pursuant to that certain Declaration of Condominium of the Heather Park Condominium Project executed on April 25, 1979, and recorded in the Office of the Utah County Recorder on May 4, 1979, as Entry No. 16793, in Book 1740, Page 733, together with subsequent amendments thereto (the Declaration), and the Record of Survey Map of the Heather Park Condominium Project recorder concurrently therewith. The Project is situated in the City of Provo, Utah County, State of Utah, and more particularly described as follows:

All of the Units ~~A1, A2, A3, A4, B1, B2, B3, B4, C1, C2, C3, C4, D1, D2, D3 and D4~~ of the Heather Park Condominium Project as more particularly described in the Declaration of Condominium of the Heather Park Condominium Project dated April 29, 1979, and recorded in the office of the Utah County Recorder on May 4, 1979, as Entry No. 16793, in Book 1740, Page 733, and the Record of Survey Map for such project recorded in the office of the Utah County Recorder on May 4, 1979, as such instruments may have heretofore been amended and supplemented, together with the undivided ownership interest in the common areas and facilities pertinent to such Units.

*See  
attachme  
#1*

B. Section 37 of the Declaration authorizes amendment to the Declaration upon the vote of at least 65% of the undivided ownership interest in the common areas and facilities of the Project.

C. As provided in the Declaration, over 65% of the Owners of the Project have authorized completely replacing Heather Park Condominium Project's, Article III, Covenants, Conditions and Restrictions. **Amendment 11** supersedes and replaces all of Heather Park Home Owners' Condominium Project's Previous Covenants, Conditions and

Restrictions and all of the prior Amendments to Heather Park Condominium Project's Covenants, Conditions and Restrictions (Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10).

*see attachment # 2*

NOW THEREFORE, the Management Committee enters this Amendment into the Declaration for the purpose of effecting a modification to the Declaration approved by the owners in accordance with the Declaration so that Article III, Covenants, Conditions and Restrictions and Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 will be combined, updated, simplified and clarified to be as follows:

**ONE.** Section III, Covenants, Conditions and Restrictions and Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 is hereby combined, updated, simplified and clarified to be as follows:

### **III. COVENANTS, CONDITIONS AND RESTRICTIONS**

The foregoing submission is made upon and under the following covenants, conditions, and restrictions.

1. **Description of improvements.** The improvements included in the Project are now or will be located upon the Tract. The significant improvements contained in the Project include four (4) Buildings, asphalt parking area and driveways, concrete sidewalks or walkways, and concrete porches and /or patios. The locations and configuration of the improvements referred to in the foregoing sentence are depicted on the Survey Map. The project also contains other improvements of a less significant nature, such as outdoor lighting, fencing, and landscaping, all of which are to be the type and in the location reasonably determined to be appropriate by Declarant. The survey Map shows the basements, the number of stories, and the number of Units which are contained in the four (4) buildings included in the Project. Said Buildings are composed of the following materials: wooden frame with load and non-load bearing concrete wall studded with wood; basement floors and walls of concrete; first floor of wooden joists; roof of wooden truss type; roof is covered with plywood and surfaces with composition shingles; interior walls surfaced with gypsum boards; and exterior surfaced with aluminum siding.
2. **Description and Legal status of Units.** The Record of Survey Map shows the Unit Number of each Unit, its location, dimensions for which its size may be determined and the Common Areas and Facilities to which it has immediate access. Each Unit shall be capable of being separately owned, encumbered, and conveyed.
3. **Contents of Exhibit "A".** Exhibit "A" to this Declaration furnishes the following information with respect to each Unit contained in the Project: (i) The unit Number; (ii)

- #1 Heather Park Condo, Apt 1, Bldg A  
 Heather Park Condo, Apt 2, Bldg A  
 Heather Park Condo, Apt 3, Bldg A  
 Heather Park Condo, Apt 4, Bldg A  
 Heather Park Condo, Apt 1, Bldg B  
 Heather Park Condo, Apt 2, Bldg B  
 Heather Park Condo, Apt 3, Bldg B  
 Heather Park Condo, Apt 4, Bldg B  
 Heather Park Condo, Apt 1, Bldg C  
 Heather Park Condo, Apt 2, Bldg C  
 Heather Park Condo, Apt 3, Bldg C  
 Heather Park Condo, Apt 4, Bldg C  
 Heather Park Condo, Apt 1, Bldg D  
 Heather Park Condo, Apt 2, Bldg D  
 Heather Park Condo, Apt 3, Bldg D  
 Heather Park Condo, Apt. 4, Bldg D

- #2 10th Amendment - 33293 : 2018  
 9th Amendment - 33146 : 2004  
 8th Amendment - 77796 : 2003  
 7th Amendment - 77795 : 2003  
 6th Amendment - 85731 : 2001  
 5th Amendment - 85730 : 2001  
 4th Amendment - 85729 : 2001  
 3rd Amendment - 85728 : 2001

1st Amendment. 83085 : 2001

30089 : 1997  
 36 : 1997

The size of the Unit; and (iii) The percentage of undivided ownership interest in the Common Areas which is appurtenant to the Unit.

4. **Computation of Undivided Interests.** The percentage of undivided ownership interest in the Common Areas and Facilities which, at any point in time, is appurtenant to a Unit shall be equal to the ratio between the Size of such Unit and the Aggregate Size of all Units included in the Project. The percentage of undivided ownership interest which is appurtenant to each Unit contained in the Project has been computed in the aforesaid manner and through use of the minor adjustments described at the end of this Section 4. Declarant shall have the right to make minor adjustments in some or all of the percentage interests which result from a strict application thereof for the purpose, but only for the purpose, of assuring that at all times the total undivided ownership interest respecting the Project equals 100.0000%
5. **Limited Common Areas.** The limited Common Areas and Facilities which are contained or to be contained in the Project consist of all patios, porches, and balconies attached or adjacent to a Building and which are labeled as Limited Common Areas on the Survey Map. The exclusive use of each patio, porch, or balcony is reserved to the Unit which it adjoins or with which it is associated.
6. **Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Condominium Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_, Building No. \_\_\_\_\_ contained within the Heather Park Condominium Project as the same is identified in the Record of Survey Map recorded in Utah County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of the Heather Park Condominium Project recorded in Utah County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Areas and Facilities which is appurtenant to said unit.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any part who acquires any interest in a Unit. Neither the percentage of undivided ownership interest in the Common Areas and Facilities nor the right of exclusive use of a limited Common Area and Facility shall be separated from the Unit to which it appertains; and, of transfer, such percentage of undivided ownership

interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

7. Permissible Usage and Restriction. All Units are intended to be used for single family residential housing and are restricted to such use. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to create a nuisance or interfere with the rights of any Unit Owner, or in any way which would result in an increase in the cost of any insurance covering the Project as a whole. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units. No leases, charges for use, rental agreement, licenses, or similar arrangements shall be employed or entered into with respect to any portions of the Common Areas and Facilities.

- (a) Vehicles and Parking. Automobiles and other vehicles may be parked only in the parking area provided. Vehicles larger than standard size pickup trucks are not allowed on Heather Park property except for the following exceptions: (i) Vehicles being used during the process of moving in or out of a Unit. (ii) Vehicles being parked temporarily while service or maintenance work is done in the condominium.

Each Unit is designated one reserved parking space with the unit's number painted on it. The residents of each Unit are allowed to park a second vehicle if a non-reserved parking space is available. Due to the limited number of parking spaces, each Unit is restricted to having no more than two vehicles parked on Heather Park property at any one time. If a Unit has two vehicles parked on Heather Park property, one of the vehicles must be parked in the Unit's reserved parking space. Non-reserved parking is available on a first come basis. Non-reserved parking spaces are for temporary parking only (forty-eight hours or less). Vehicles left for more than 48 hours will be towed at the owner's expense.

All vehicles parked on Heather Park property must clearly display a Heather Park parking permit in the vehicle. Each unit will be issued two permits. Permits may not be sold, given away or transferred to anyone who is not a permanent resident of the Unit for which the permit was issued. Permits may only be used by permanent residents in the Unit for which they were issued. Lost permits will cost \$10.00 to replace.

No visitors are allowed to park on Heather Park property.

Any vehicle on Heather Park property not complying with Heather Park's "Covenants, Conditions and Restrictions" will be towed at the owner's expense.

(b) Pets. As per the Third Amendment to the Declaration enacted on May 22, 1990, no animals shall be kept or allowed in any part of the Project except fishes, birds and small rodents in cages (ie: hamsters). Owners will be responsible for informing their tenants of this rule. This amendment was not made retroactive.

As per the Seventh Amendment to the Declaration enacted on April 1, 1999; in the event that an Owner, Renter or Visitor fails to comply with the No Pet Policy, that Owner, Renter or Visitor will receive a warning notice and will have 30 days to remove the pet from the premises. If the Owner, Renter or Visitor does not comply within those 30 days, the Management Committee shall have the right to assess a \$100.00 fine to the Owner of the Unit for each month in violation and legal action against the Owner of the Unit will ensue. The sums received by the Committee shall be used to reimburse the Association treasury for the expenses incurred to remedy any damages / maintenance necessary to rectify the matter. The funds may also be use for the Presidency Committee's operating expenses. The Management Committee shall have the right to file suit in small claims court, or another appropriate court, to obtain a personal judgment against the delinquent Owner for all fees owed, together with costs and expenses of collection and litigation. Such action may be instituted by the Management Committee, the President of the Association, another officer of the Association, or such other person as the President of the Association or Management Committee shall designate.

In the 2016 annual owners' meeting, it was agreed that the "no pet policy" was to finally be enforced, but again, not retroactively. But it was also agreed to that:

- (i) Current pets must be register with the Home Owners Association with a picture of their pet and a list of any identifying marks.
- (ii) No new pets.
- (iii) In the Home Owners Association annual meeting held July 27, 2016, it was agreed that when a pet defecates in the common area, it must be picked up immediately, placed in an air tight container or sealed plastic bag to contain any odor and so as not to attract flies. The container or sealed plastic bag must be immediately deposited in the Heather Park Dumpster. If a pet's feces is not immediately picked up and properly disposed, the owner of the Unit in which the pet resides will be fined \$25.00 per violation payable to the Heather Park Home Owners Association.
- (iv) In the Home Owners Association annual meeting held July 27, 2016, it was also agreed that dogs must be on a leash in any of the common

areas. A single violation will be subject to a \$25.00 fine payable to the Heather Park Home Owners Association.

(v) **No Smoking.** No smoking is allowed on Heather Park Property. Smoking on Heather Park Property, whether in a Unit or on the Common area, will incur a \$25.00 fine. The owner of the Condominium Unit is responsible for their guests obeying this rule. If a condominium Unit is leased, the owner or owners of the Unit are responsible for the Unit's occupants and are responsible for the friends and visitors of the Unit's occupants. Fines will be assessed to the owner of the condominium Unit payable to the Heather Park Home Owners Association.

(c) **Renting of Condominium Units.** Except for a Mortgagee in possession of a Condominium Unit by reason of a default in a Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner may lease his unit for transient or hotel purposes. A Condominium Unit may be leased by the Unit's owner if the following terms and conditions are met:

- (i) The Unit's owner or owners informs the Heather Park Home Owners Association of the names of all tenants.
- (ii) There is a lease agreement in writing.
- (iii) Not less than the entire Unit is leased.
- (iv) Terms of the lease agreement are made subject in all respects to the provisions of this Declaration.
- (v) Failure of the lessee to comply with the provisions of this Declaration shall constitute a default under such lease agreement.
- (vi) The Unit's owner or owners are responsible for the occupants of their Unit complying with all of the provisions of this Declaration. All fines and penalties assessed by Heather Park Home Owners Association because of the actions of a Unit's tenants or because of the actions of the tenant's guests or visitors are the responsibility of the Unit's owner or owners.

8. **Condition and Maintenance of Units and Limited Common Areas.** Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit or portions of the Project. Each Unit Owner shall keep his appurtenant porch in a clean and orderly condition, but shall not otherwise maintain the same. The necessary work of repair and replacement of porches shall be decided upon and carried out by the Committee. The

Committee shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners.

- (a) Air Conditioners. Central air conditioning units or window air conditioners may be installed by Unit Owners. Air conditioning units may be placed in the common area at the rear of the Unit or on the roof of the Unit with the following conditions:
- (i) All installation costs and maintenance costs associated with the installation and maintenance of air conditioners are the sole responsibility of the individual, Unit Owner.
  - (ii) Any damages to the Unit and/or Building or to the Common Areas which are caused by the installation, maintenance or use of the air conditioners are the sole responsibility of the Unit Owner of the air conditioner.
  - (iii) Damages to air conditioners, whether caused by acts of nature, vandalism, etc. are the sole responsibility of the Unit Owner of the air conditioner.
  - (iv) Air conditioners shall be maintained by the Unit Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit or portions of the Project.
- (b) Maintenance and Use of Common Area. The Common Area is for the use of all Units Owners and Unit tenants. Unit Owners and tenants may not leave any personal items in the Common Area. The Unit Owner is responsible for any damage or harm caused by items left in the Common Area. This includes items left by the Unit Owners or by the Unit Owner's tenants. The Management Committee may remove and dispose of any items left in the Common Area after written notice has been given to the Unit Owner. The cost of the removing and disposing of items left in the Common Area shall be paid by the Unit Owner. Remedies for the collection of removal costs are stated in Section 21 of this document.

9. Encroachments. In the event that any portion of a Unit and/or Building (whether constructed by builder or reconstructed so as to substantially duplicate a Unit or Building originally constructed by builder) encroaches or comes to encroach on the Common Areas, Limited Common Areas, another Unit, and/or another Building, and easement for such encroachment and its maintenance, if necessary, is created hereby and shall exist so long as such encroachment exists.



**10. Status and General Authority of Committee.** The Condominium Project shall be managed, operated, and maintained by the Management Committee on behalf of the Unit Owners. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (i) below, constitute a legal entity capable of dealing in its Committee name. The management Committee shall have, and is hereby granted, the following authority and powers (all of which are, however, subject to the provisions of Section 36 of this Article III:

- (a) The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, reasonable utility and similar easements over, under, across, and through the Common Areas and Facilities:
- (b) The Authority to execute and record, on behalf of all the Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary authorize such amendment.
- (c) The power to sue and be sued.
- (d) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- (e) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained.
- (f) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.
- (g) The power and authority to add any interest in real property obtained pursuant to sub-paragraph (f) above to the Condominium Project, so long as such action has been authorized by the necessary vote or consent.
- (h) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

- (i) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Unit Owners.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively established said power and authority in favor of any person who in good faith and for value relies upon said instrument.

11. Professional Condominium Project Manager. The Committee may carry out through a Professional Condominium Project Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Condominium Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the Project which may be entered into by the Management Committee or the Association shall call for a term not exceeding one year, but which may be renewable by agreement for successive one-year periods and shall provide that for cause such management agreement may be terminated by the Management Committee or by the Association upon not in excess of thirty (30) days written notice. It is anticipated that the Committee and Declarant will enter into a Management Agreement on a month-to-month basis to begin on or about the date this Declaration is filed for record.
12. Composition of Management Committee. The Committee shall be composed of three members. At each annual Owners meeting, any vacant seat on the Committee shall be filled with a member elected for a two-year term. Only Unit Owners in good standing in the Home Owners Association shall be eligible for Committee membership. Any Unit Owner who has been two (2) months past due with their Home Owners Association fees or assessments during the previous twelve (12) months prior to the election, may not run for any Management Committee office. Any Committee Member who becomes two (2) months past due with their Home Owners Association fees or assessments during their term of office automatically forfeit their seat. At each annual meeting the percentage of undivided ownership interest appurtenant to a Unit may be voted in favor of as many candidates for Committee memberships as there are seats on the Committee to be filled.  
Any committee Member who fails to attend Committee meetings on three successive occasions (whether regular or special) held during any 12-month period shall automatically forfeit their seat. Vacancies in the Committee may occur when a

Committee Member is derelict in their duties as just describe, when a Committee Member is delinquent in their fees or assessments as described in the previous paragraph, when a Committee Member asks to be removed from the Committee, or when a Committee Member sells their Unit. In the case of a vacancy, the remaining committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless a Committee Member forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until their successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. Committee members shall receive no salaries but the Committee may fix such compensation for any member as may be reasonable in light of any extra-ordinary Committee duties which that member is required to perform.

13. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any Committee officer, agent, or employee may at any time be removed with or without cause by the vote of a majority of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:
- (a) President. The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. The President shall preside over all meetings of the Committee and of the Unit Owners. The President shall execute all instruments on behalf of the Committee.
  - (b) Vice President. The Vice President shall have all the powers of the President in the event of the latter's absence or inability to act.
  - (c) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Unit Owners and shall keep all records which are required or make necessary by the Utah Condominium Ownership Act, this Declaration, or the Committee.
  - (d) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. Upon request of the Committee the Treasurer shall furnish it with a bond, in the amount specified by the Committee, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer or of Vice-President and Treasurer may be held by the same Committee member.

14. **Committee Meetings.** A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting. Other regular meetings shall be held at periodic intervals at such time and place as the Committee may provide. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee member at least 24 hours before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting which is grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all members then in office.
15. **Owners' Meetings.** When possible, the annual meeting of the Unit Owners shall be held at 7:00 p.m. on the first Tuesday in April. If circumstances require the meeting to be delayed, the Committee President shall inform the Unit Owners the reason for the delay and when the meeting will be held. The place of the meeting shall be at a location in Utah County, Utah specified in the notice of the meeting. At least 14 days before, but not more than 30 days before the date of the annual meeting, a written notice thereof shall be personally delivered, mailed postage prepaid or e-mailed to each person who appears as an Owner, at the latest address for such person appearing in the records of the Committee at the time of delivery or mailing. Such notice shall state the time, place, and general purpose of the meeting.
16. **Voting – Multiple Ownership.** The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest which is then appurtenant thereto. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.
17. **Ownership List.** The Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or the transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The

Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Utah County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised.

18. Capital Improvements. Additions or capital improvements to the Project which cost no more than \$1,000.00 may be authorized by the Management Committee alone. Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by at least a majority of the undivided ownership interest in the Project. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least 65% of the Project's undivided ownership interest.
19. Operation and Maintenance. The Management Committee shall, as a portion of the Common Expenses, pay for, or provide for the payment of, all utility services furnished to the Project which are not separately metered and billed to individual Units by the utility of other party furnishing such service. The Committee shall provide for such maintenance and operation of the Common and Limited Common Areas and Facilities as may be reasonably necessary to make them appropriately usable in conjunction with the Units and keep them clean, functional, attractive, and generally in good condition and repair.
20. Payment of Expenses (Home Owners Association Fees). On or before the date of each annual meeting of Owners, the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the 12-month period commencing one month following the annual meeting of the Owners. Such budget shall take into account any deficit or surplus realized during the current fiscal year and such sums as may be necessary to fund an appropriate reserve to cover major repair or replacement of portions of the Common Areas and Facilities. The total of such expenses shall be apportioned among all the Units on the basis of their respective appurtenant percentages of undivided ownership interest.
  - (a) Monthly HOA Fees. Prior to the first (1<sup>st</sup>) day of each month during the fiscal year covered by the budget each Unit Owner shall pay to the Committee as his share of the Common Expenses one-twelfth of the amount so apportioned to his Unit. If the aggregate of the monthly payments attributable to all of the Units is too large or too small as a result of the unanticipated income or expenses, the Committee may from

time to time effect an equitable change in the amount of the said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Units may be altered by the Committee so long as the method it adopts is consistent with good accounting practice and required that the portion of Common Expenses borne by each Unit during a 12-month period be determined on the basis of its appurtenant undivided ownership interest as it may from time to time be adjusted in accordance with this Declaration.

- (b) Change in a Unit's Ownership. Each time legal title to a Unit passes from one person to another, within thirty (30) days after the effective date of such title transaction the new Unit Owner shall pay to the Committee, in addition to any other required amounts the sum of \$375.00. The provisions of the following Section 21 shall apply to the collection of such sum. The sums received by the Committee pursuant to this Paragraph shall be used to reimburse the Association treasury for the expenses incurred in providing new Unit Owners with a copy of this Declaration and subsequent by-laws, and any set-up and recording fees by the Association.
- (c) HOA Fees for "Non-Owner Occupied" Units. Any time that a unit is not inhabited by the unit Owner (or a member of the unit Owner's immediate family) and is rented out to a third party; the unit is considered "Non-Owner Occupied." All Non-Owner Occupied units may be subject to a monthly surcharge to be paid to the Association in addition to the Common Expense assessments attributed to the unit. This is to discourage Unit Owners who are landlords from assuming that their tenants' behavior and their tenants' observance of Heather Park Condominium's, "Covenants, Conditions and Restrictions" are the problem of the Heather Park Condominium Association. Landlords are responsible for their tenants. The Unit Owner is ultimately responsible for any fines or penalties their tenants and for any fines or penalties that the visitors of their tenants incur. The amount of this "Non-Owner Occupied" surcharge is to be determined by the Management Committee and authorized by a vote of at least a majority of the undivided ownership interest in the Project. The sums received by the Management Committee pursuant to this Paragraph shall be held by it as a contingency reserve and shall be used at such time and for such purposes as the Management Committee may determine. In the event that a Non-Owner Occupied unit Owner becomes delinquent in the payment of the Non-Owner Occupied monthly surcharge, the Management Committee shall have the right to use the same means of collection as outlined in Section 21 of this declaration.

21. Remedies for Nonpayment. Should any Unit Owner fail to pay when due his share of the Common Expenses, the Management Committee shall have the right to assess late

fees as described in Section III, Part 21 (b). Should any Unit Owner become delinquent in paying fines levied by the Management Committee, the fines shall bear interest at the rate of 18% per annum. The Committee may use any remedy for the collection Common Expenses and for the collection of fines that is provided in the Utah Condominium Ownership Act or may use any other means available for the collection of delinquent Common Expense assessments and/or fines. Regardless of the term of any agreement to the contrary, liability for payment of the Common Expense assessment and/or fines shall be joint and several, and any remedy for the collection of such assessments may be enforced against any Owner of the Unit concerned or against the Unit itself. Any relief obtained, whether or not through foreclosure proceeding, shall include the Committee's costs, expenses and a reasonable attorney's fee. In the event of foreclosure, after institution of the action, the Committee shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.

- (a) Collection of Fees from a Non-Owner Occupied Unit. If a Unit Owner shall at any time lease his Unit and shall default for a period of three (3) months in the payment of his share of the Common Expenses, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Unit Owner the rent due or becoming due. The payment of such rent to the Management Committee shall be sufficient payment, shall discharge such tenant for rent due, and discharge the Unit Owner for such assessments to the extent of the amount so paid. In the event that the amount of rent so collected exceeds the amount of Common Expenses and assessments owing, the difference shall be remitted to the Unit Owner by the Management Committee.
- (b) Common Expenses Late Fees. In the event that an Owner fails to pay any assessment of Common Expenses within 10 days following the due date thereof, the Management Committee shall have the right to assess a late fee on such payment equal to \$25.00 for the month in which such payment is past due and an additional \$25.00 late fee for each month thereafter that such assessment remains unpaid as of the 10<sup>th</sup> day of such month. (In other words, any payment received on the 11<sup>th</sup> of the month, or later, is considered late.) For example, if the Common Expense assessments due January 1 and February 1 are not paid until February 11, two late fees of \$25.00 each would be charged to the January assessment, plus a \$25.00 late fee would be added to the February assessment, for a total of \$75.00 in late fees. In addition to the other remedies provided in this Declaration of the Act, in the event that any assessment for Common Expenses is more than 90 days past due, the Management Committee shall have the right hire an attorney or to file suit in small claims court, or another appropriate court, to obtain a personal judgment against the delinquent Owner for all

past due assessments of Common Expenses owed, together with late fees and for expenses of collection and litigation. Such action may be instituted by the Management Committee, the President of the Association, another officer of the Association, or such other person as the President of the Association or the Management Committee shall designate.

22. Management Committee Liability. No member of the Management Committee shall be liable to the Unit Owners for any mistake of judgment, for negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each member of the Management Committee from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of any Unit Owner arising out of any contract made by the Management Committee or out of the indemnification provisions set forth in the foregoing portion of this Section 22 shall be limited to the total liability concerned multiplied by such Owner's undivided ownership interest in the Common Areas.

23. Hazard Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force hazard insurance meeting the following requirements:

- (a) A multi-peril type policy covering the entire Condominium Project (both Units and Common Areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to condominium projects similar to this Project, this Project's location and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, if available, or an "Inflation Guard Endorsement," and, if necessary or appropriate, a "Demolition and Contingent Liability from Operation of Building Laws Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or its equivalent, and an "Earthquake Damage Endorsement" or its equivalent.



- (b) If the project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development as a area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained. The minimum amount of coverage afforded by such policy shall be the lesser of the maximum limit of coverage available under said Act or the aggregate of the unpaid principal balance of the Mortgages affecting the individual Units. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.
- (c) The named insured under each policy required to be maintained by the foregoing items (a) and (b) shall be in the form and substance essentially as follows; "Association of the Heather Park Condominium Project, or its authorized representative, for the use and benefit of the individual Owners." (Said Owners shall be designated by name, if required).
- (d) Each such policy shall include the standard mortgagee clause (without contribution) which either shall be endorsed to provide that any proceed shall be paid to the Association of Unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In Addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy
- (e) Each such policy shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or if such option is in conflict with any requirement of law.

**24. Fidelity Insurance.** The Management Committee or Association shall have the option to maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of managers), trustees, employees, officers, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. If obtained, the fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount determined by the Committee to be appropriate. An appropriate endorsement to

the policy may be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

25. **Liability Insurance.** Each Unit Owner, at his own expense, may maintain in force liability insurance covering his Unit. The Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location, and use. The limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence.
26. **General Requirements Concerning Insurance.** Each insurance policy maintained by the Management Committee of Association of Unit Owners pursuant to the foregoing Sections 23, 24 and 25 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best' Insurance Reports of BBB+ or better. No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, the Association of Unit Owners, a Unit, the Common Areas, or the Project; (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (iv) the policy provided that the insurance there under shall be brought into contribution with insurance purchased by the individual Unit Owners or their Mortgagees. Each such policy shall provide that: (a) coverage shall not be prejudiced by any act or negligence of the Unit Owners when such act or negligence is not within the control of the Association of Unit Owners or the Management Committee; (b) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have not control; (c) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insured named therein, including any Mortgagee named as an insured; and (d) the insurer waives any rights or subrogation it might have as to any and all claims against

the Association, the Management Committee, and Unit Owner, and/or their respective agents, employees, or tenants, and any defense it might have based upon co-insurance or upon invalidity arising from acts of the insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under this Section 26 and/or Sections 23, 24 and 25 hereof cannot reasonably be secured, with respect to such coverage the Association or the Committee shall obtain and maintain such substitute, different, or other coverage as may be reasonable and prudent under the circumstances as they then exist.

27. Destruction, Condemnation, and Obsolescence. The provisions of this Section 27 and of the following Sections 28 through 31 shall apply with respect to the destruction, condemnation, or obsolescence of the Project. As used in such Sections each of the following terms shall have the meaning indicated:

- (a) Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.
- (b) Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.
- (c) Obsolescence. "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.
- (d) Restoration. "Restoration", in the case of any damage or destruction, shall mean restoration of the Project to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction concerned; in the case of condemnation, shall mean restoration of the remaining portion of the Project to an attractive, sound, and desirable

condition; and, in the case of obsolescence, shall mean restoration of the Project to an attractive, sound, and desirable condition.

- (e) Restored Value. "Restored Value" shall mean the value of the Project after restoration.
- (f) Estimated Costs of Restoration. "Estimated Cost of Restoration" shall mean the estimated cost of Restoration.
- (g) Available Funds. "Available Funds" shall mean any proceed of insurance, condemnation awards, payment in lieu of condemnation, and any uncommitted funds of the Management Committee or Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceed legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Condominium Unit for the condemnation or taking of the Unit in which they are interested.

28. Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Cost of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

29. Restoration of Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence, but shall be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence only with the consent of Owners collectively holding at least seventy-five (75%) of the Mortgagees (based upon one vote for each Mortgage). Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation or Substantial Obsolescence exists, it shall send to each Owner and Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with

the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in Proportion to their respective undivided interest in the Common Areas. Payment to any Owner whose Condominium Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.

30. Sale of Project. The Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the consents required by Section 29 hereof have been obtained within six (6) months after the Committee sends the written description contemplated by said Section 29. In the event of such sale, condominium ownership under this declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interest in the Common Areas. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
31. Authority of Committee to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Condominium Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.
32. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of undivided ownership interest. The following additional provisions shall govern any application of this Section 32.
  - (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

- (b) Any change in ownership of a Condominium Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.
- (c) Unless the consent of all Owners have any interest in the same Unit are secured, the consent of none of such Owners shall be effective.

33. **Mortgagee Protection.** In the event that the Owner of a Condominium Unit neglects for a period of thirty (30) days to cure any failure of the Unit's Owner to perform any of the Owner's obligations under this Declaration, the Committee will notify any and all Mortgage holders of the Unit in default.

The lien or claim against a Condominium Unit for unpaid assessment or charges levied by the Management Committee or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to the Mortgage affecting such Condominium Unit, and the Mortgagee there under which comes into possession of or which obtains title to the Condominium Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of power of sale available there under, or deed or assignment in lieu of foreclosure (except for claims for a pro rata reallocation thereof to all Condominium Units including the Condominium Unit in which the Mortgagee is interested). No assessment charge, lien, or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by either the Management Committee of the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Condominium Unit affected or previously affected by the Mortgage concerned to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Unit.

Unless all of the Mortgagees of the individual condominium Units have given their prior written approval; neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

- (a) To abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey May (except as provided in Sections 27 through 31 of the Article in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence);

- (b) To partition or subdivide any Unit;
- (c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas, except as provided in Sections 27 through 31 of this Article in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence);
- (d) To use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Sections 27 through 31 of this Article in the event of Substantial Destruction;
- (e) To change the pro rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds of condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities;
- (f) To alter the provisions of Section 11 of this Article III in such a way as to diminish the protections afforded to the Owners regarding the duration or terminability of agreements for managerial services; or
- (g) To alter the provisions of Sections 26 through 29 of this Article III in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.

Any Mortgagee shall, upon request, be entitled to: (i) at its expense and upon reasonable notice, inspect the books and records of the Management Committee of the Association or of the Condominium Project during reasonable business hours; (ii) receive an annual audited financial statement of the Condominium Project within ninety (90) days following the end of any fiscal year of such Project and such annual or other operating reports of writings summarizing or reflecting the financial position or history of the Condominium Project as may be prepared for distribution to or use by the Committee, the Association or the Unit Owners; and (iii) written notice of all meetings of the Unit Owners to which it may designate a representative to attend.

To the extent the same is reasonably possible and practical and is not inconsistent with the significant interests of the Association of Unit Owners, the Management Committee and the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessment.

From and after the time a Mortgagee makes written request to the Management Committee of the Association of Unit Owners therefore, the committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage to or loss to, or taking or anticipated condemnation of: (i) The Common Areas involving an amount in excess of, or reasonably estimated to be in the excess of, Ten Thousand Dollars (\$10,000.00); or (ii) Any Unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking, or anticipated condemnation.

In the event another provision or clause of the Declaration deals with the same subject matter as is dealt with in any provision or clause of this Section 33, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Management Committee and Association or Unit Owners with respect to the subject concerned.

No amendment of this Section 33 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Section 36 shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Utah County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of Mortgagees required by this Section 33 as a condition to amendment has been obtained.

34. **Amendments.** The vote of at least 65% of the undivided ownership interest in the Common Areas and Facilities shall be required to amend this Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recording of such amendment with the Utah County Recorder. The Committee shall certify that the vote required by this Section for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:



(a) Any amendment to the foregoing Section 33 ("Mortgagee Protection") shall be subject to the matters treated by the last Paragraph of said Section.

35. **Interpretation.** To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall included both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof.
36. **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Condominium Units shall be subject to, the term of this declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
37. **Remedies.** The failure of any Unit Owner to comply with any of the provisions of this Declaration shall give rise to a cause of the action in the Association and any approved Unit Owner for recovery of damages or for injunctive relief or both. The prevailing party in any such cause of action shall be entitled to reasonable attorney fees and cost of court incurred in the enforcement of this Declaration.

**TWO. Certification and Effective Date** The undersigned members of the Management Committee of the Heather Park Condominium Project hereby certify that the above amendment to the Declaration was approved by Owners owning at least 65% of the undivided ownership interest in the Payment of Expenses of the Project at a meeting of the Association of Unit Owners at which a quorum was present, held April 5, 2023; approved by at least 65% of the undivided ownership interest in the Payment of Expenses of the Project in our election, voting by written ballots in April, 2023; and approved by at least 65% of the undivided ownership

interest in the Payment of Expenses of the Project in subsequent voting by e-mail sent in April 2023 (Final voting ended on April 18, 2023, when over 65% of ballots returned approved of the final draft of Amendment 11). This Amendment 11 to the Declaration is intended to be effective to the date of such final voting, April 18, 2023.

**THREE.** Continued Enforceability Except as specifically amended hereby, the Declaration shall continue in force and effect, enforceable in accordance with all of its original terms and provisions.

The Undersigned, being all members of the Management Committee of the Heather Park Homeowner's Association hereby certify that this amendment was authorized by the affirmative vote either in person or by proxy, or by written ballots of more than 65% of the undivided ownership interest in the Common Areas and Facilities of the Project.

HEATHER PARK HOMEOWNERS' ASSOCIATION MANAGEMENT COMMITTEE

IN WITNESS WHEREOF, this amendment to the Declaration of the Condominium of the Heather Park Condominium Project is executed as of the day and year first above written.

MANAGEMENT COMMITTEE OF THE HEATHER PARK CONDOMINIUM PROJECT

Hannu Willey  
Hannu Willey, President

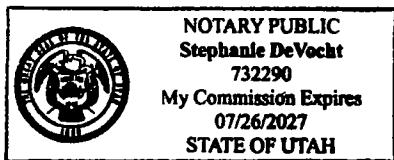
STATE OF UTAH )  
:SS  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2023, by Hannu Willey, a duly sworn member of the Management Committee of the Heather Park Condominium Project.

Stephanie DeVoucht  
NOTARY PUBLIC

STATE OF UTAH  
COUNTY OF: Utah  
ON THE 21<sup>st</sup> DAY OF Aug.  
PERSONALLY APPEARED BEFORE ME  
Hannu Willey SIGNER(S) OF THE ABOVE  
INSTRUMENT, WHO DULY ACKNOWLEDGED TO ME THAT  
HE/SHE/THEY EXECUTED THE SAME

Stephanie DeVoucht  
NOTARY PUBLIC



\_\_\_\_\_  
, Vice President

STATE OF UTAH            )  
  :SS  
COUNTY OF UTAH        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of August, 2023, by  
, a duly sworn member of the Management Committee of the Heather Park Condominium  
Project.

\_\_\_\_\_  
NOTARY PUBLIC

*Wynette Bodily*  
Wynette Bodily Secretary / Treasurer

STATE OF UTAH            )  
  :SS  
COUNTY OF UTAH        )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2023, by  
Wynette Bodily a duly sworn member of the Management Committee of the Heather Park  
Condominium Project.

*Stephanie DeVocht*  
NOTARY PUBLIC

STATE OF UTAH  
COUNTY OF: Utah  
ON THE 21<sup>st</sup> DAY OF AUG.  
PERSONALLY APPEARED BEFORE ME  
Wynette Bodily SIGNER(S) OF THE ABOVE  
INSTRUMENT, WHO DULY ACKNOWLEDGED TO ME THAT  
HE/SHE/THEY EXECUTED THE SAME

*Stephanie DeVocht*  
NOTARY PUBLIC

