

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF**

BENCHMARK VILLAGE

A Utah Condominium Project

Tooele, Tooele County, Utah

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AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
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A Utah Condominium Project

This Amended and Restated Declaration of Condominium of Benchmark Village (herein this "Declaration") is made effective when recorded with the Tooele County Recorder's Office by the Benchmark Village Homeowners Association, Inc. ("Association").

ARTICLE I
RECITALS

A. The Utah condominium project known as Benchmark Village ("Condominium Project") was made subject to that certain instrument entitled *Declaration and Bylaws of the Bench Mark Village* recorded in the Tooele County Recorder's Office on September 22, 1977 as Entry Number 329367.

B. The *Amendment #1 to the Bylaws of the Benchmark Village* was recorded in the Tooele County Recorder's Office on November 6, 1990 as Entry Number 037726.

C. The *Amendment #1B, Amendment to Amendment #1* was recorded in the Tooele County Recorder's Office on December 13, 1990 as Entry Number 038376.

D. The *Amendment to Declaration and Bylaws of the Bench Mark Village Condominium Project* was recorded in the Tooele County Recorder's Office on August 10, 2001 as Entry Number 167381.

E. The *Amendment to Declaration of the Bench Mark Village Condominium Project* was recorded in the Tooele County Recorder's Office on April 25, 2018 as Entry Number 466739.

F. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Condominium Project and shall completely replace and supersede in all respects all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.

G. This Declaration affects the real property situated in Tooele County, Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference and shall be binding on all parties having or acquiring any right, title, or interest to the Condominium Project or any part thereof.

H. The Unit Allocated Interests are shown on Exhibit B attached hereto.

I. The Bylaws of the Association attached hereto as Exhibit C supersede and replace any previous bylaws of the Association and any amendments thereto, whether recorded or not.

J. Pursuant to Utah Code §57-8-39(1)(a)(i)(A), Owners representing at least sixty-seven percent (67%) of the Allocated Interests have approved this Declaration. The signature hereinafter of the president of the Association certifies and attests that such vote was obtained.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the covenants set forth below, the Association hereby adopts this Declaration. This Declaration, together with the Plat, Bylaws, and Rules adopted by the Association, as may be amended, shall define and govern the rights of the Owners and the Association related to the Condominium Project.

ARTICLE II DEFINITIONS

- 2.1 **"Act"** shall mean the Utah Condominium Ownership Act, codified beginning at §57-8-1, Utah Code Annotated, as the same may be amended from time to time.
- 2.2 **"Allocated Interest"** shall mean the undivided interest (expressed as a fraction in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit. The Allocated Interest is shown on Exhibit B and is equal for each Unit.
- 2.3 **"Articles"** shall mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.4 **"Assessments"** shall mean any charge imposed or levied by the Association against Units including but not limited to annual assessments, special assessments, benefited assessments, individual assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.
- 2.5 **"Association"** shall refer to the Benchmark Village Homeowners Association, Inc., whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association is incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board who may utilize such name that the Board shall select in any such reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.
- 2.6 **"Bylaws"** shall mean the Bylaws attached hereto as Exhibit C, or as the same may be amended from time to time.
- 2.7 **"Board Member"** shall mean a duly qualified and elected or appointed member of the Board.
- 2.8 **"Board"** shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the managing body of the Association. It shall have the same meaning as "Management Committee" does in the Act.
- 2.9 **"Common Areas"** shall mean and refer to: (1) all land in the Project, excepting the land beneath each Unit, as further described in Section 2.24 below; (2) all portions of the Condominium Project except the Units as herein defined; (3) all roofs, foundations, exterior surfaces (except window frames and glass), and attics; (4) all pipes, wires, conduits, or other

utility lines or installations designated and designed to serve more than one Unit; (5) landscaping, roads, curbs, sidewalks, and perimeter fences; (6) swimming pool, clubhouse, and playground; (7) common parking areas; (8) those areas specifically set forth and designated on the Plat as "Common Area", and those areas and facilities described elsewhere in this Declaration; and (9) all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

- 2.10 **"Common Expenses"** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act or Governing Documents.
- 2.11 **"Condominium Project"** shall mean and refer to the entire Parcel, as defined in Article III below, together with all rights, obligations, easements, and organizations established by this Declaration. The name of the Condominium Project is Benchmark Village.
- 2.12 **"Declaration"** shall mean this Amended and Restated Declaration of Condominium of Benchmark Village, including all attached exhibits which are incorporated by reference, and any and all future amendments and supplements to this Declaration.
- 2.13 **"Eligible Mortgagee"** shall mean and refer to a first mortgagee which has requested notice of certain matters from the Association in accordance with this Declaration.
- 2.14 **"Governing Documents"** shall mean and refer collectively to the Declaration, Articles, Bylaws, and Rules.
- 2.15 **"Lender"** shall mean a first or second holder of a mortgage or deed of trust on a Unit.
- 2.16 **"Manager"** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Condominium Project.
- 2.17 **"Occupant"** shall mean any Person, other than an Owner, in possession of, using, visiting, entering into, or living in a Unit, including, without limitation, family members, tenants, guests, or invitees.
- 2.18 **"Owner"** shall mean the Person(s) owning a Unit in the Condominium Project and an undivided interest in the Common Areas as shown in the records of the Tooele County Recorder. The term Owner shall not mean or include a Lender or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer otherwise agree, in which event they shall inform the Board in writing of the alternative arrangement.
- 2.19 **"Parcel"** shall mean and include the entire tract of land as shown on the Plat and as described in Exhibit A hereto and incorporated herein by this reference, and the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

- 2.20 **"Person"** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.
- 2.21 **"Plat"** shall mean the Benchmark Village Plat as recorded in the Office of the Tooele County Recorder, and any recorded amended plats.
- 2.22 **"Restrictions"** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 2.23 **"Rules"** shall mean and refer to the rules, regulations, policies, and/or resolutions adopted by the Board.
- 2.24 **"Unit"** shall mean and refer to a separate physical part of the Condominium Project intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. A Unit shall include the land beneath the Unit lying within the perimeter of the foundation. A Unit shall also include the garage or carport attached to the Unit, as well as the attached patio, deck, doorstep, and porch. A Unit extends from the perimeter walls to the exterior surfaces thereof or to the middle of party walls separating two contiguous Units, as the case may be. A Unit includes undecorated floors and ceilings, bearing walls, perimeter walls, as well as all decorated interiors, wallboard and drywall, non-load bearing interior walls or partitions, surfaces of interior structural walls, surfaces of floors and ceilings, consisting of among others and as appropriate, wallpaper, paint, flooring, carpeting, and tile. A Unit also includes windows and window frames and doors and door frames. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. Mechanical equipment, ducts, pipes, and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.

ARTICLE III

THE CONDOMINIUM PROJECT

- 3.1 **Submission.** The Association hereby confirms that the Parcel is a Condominium Project pursuant to the Act and the Association hereby declares that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association.
- 3.2 **Name and Location.** The Condominium Project shall be named and known as BENCHMARK VILLAGE. The Condominium Project is located in Tooele, Tooele County, Utah, and the legal description of the real estate included in the Condominium Project is the

Parcel described on Exhibit A hereto. The name of the Association is BENCHMARK VILLAGE HOMEOWNERS ASSOCIATION, INC.

- 3.3 Interpretation of Declaration and Applicability of the Act. The Association intends that the Condominium Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act.
- 3.4 Agent for Service of Process. The registered agent listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Association pursuant to §57-8-10(2)(d)(iii) of the Act, until such time as the Board duly appoints a new agent.

ARTICLE IV

DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST, AND CONVEYANCE

- 4.1 Description of the Condominium Project. The land is located in Tooele, Tooele County, Utah as set forth on the Plat and is more particularly described on Exhibit A below. Benchmark Village is comprised of seventy-two (72) constructed Units along with a clubhouse, pool, playground, and other Common Areas. Units are constructed as "A," "B," and "C" types, as identified on Exhibit B. Type A Units have one main level and a full walk-out basement or patio level. Type B Units are two-level townhouses with a full basement. Type C Units are one-level with a full basement.
- 4.2 Description and Legal Status of Units. The Plat shows each Unit, its location, and the Common Areas to which it has access. All Units are capable of being independently owned, encumbered, and conveyed.
- 4.3 Allocated Interest of Each Unit. The Allocated Interest in the Common Areas which is appurtenant to each Unit is as set forth in Exhibit B attached hereto and incorporated herein by reference. An Owner's Allocated Interest shall be used for all purposes, including voting and the allocation of Common Expenses in the Condominium Project.
- 4.4 Form for Unit Conveyance. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit ____ of BENCHMARK VILLAGE, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded in the official records of the Tooele County Recorder, State of Utah, and as identified and described in the AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF BENCHMARK VILLAGE recorded _____, as Entry Number _____, of the official records of the Tooele County Recorder, State of Utah. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the fraction shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided interest in the

Common Area conveyed hereby is subject to modification, from time to time, as provided in the Declaration.

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 party who acquires any interest in a Unit.

ARTICLE V **MAINTENANCE**

- 5.1 **Common Areas.** The Association shall maintain, repair, and replace the Common Areas. If the need for maintenance, repair, or replacement of the Common Areas is caused through the willful or negligent act of an Owner or an Occupant, including but not limited to failure to properly maintain the areas for which the Owner is responsible, the Board may cause the maintenance, repair, or replacement to be made, and in such a case, the Association may individually assess the Owner the reasonable costs of such maintenance, repair, or replacement work.
- 5.2 **Units.** Each Owner shall maintain, repair, and replace his or her Unit. Units shall be maintained so as not to detract from the appearance of the Condominium Project and to maintain the value of any other Unit. Units shall be maintained to protect and preserve the health, safety, and welfare of the other Units and Common Areas. If an Owner fails to perform his or her maintenance obligations as outlined in this Section 5.3, the Association shall inform the respective Owner of the violation and either notify the Owner that he or she is required to perform such work as detailed by the Board or notify the Owner that the Association will perform such work and levy the costs resulting from the work as an Individual Assessment against the respective Owner. Owners shall seek prior written approval for changes to their Units as outlined in Section 10.16 (Architectural Control).
- 5.3 **Maintenance Allocation Chart.** Further descriptions of Association and Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached hereto as Exhibit "D." The Board shall have the unilateral authority to add to or otherwise amend Exhibit "D" so long as Exhibit "D" remains consistent with the provisions of the Declaration.
- 5.4 **Board Discretion to Determine Maintenance Responsibilities.** In the event a maintenance obligation is not outlined herein or confusion arises as to a maintenance obligation, the Board may, by resolution and in its sole discretion, determine whether the Association or the Owners shall have the responsibility to fulfill the maintenance obligation.

ARTICLE VI **MANAGEMENT**

- 6.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Areas, payment of Common Expenses, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act, the Governing Documents, and the Utah Revised Nonprofit

Corporation Act. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Governing Documents. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Association or the Board.

- 6.2 Legal Organization. The Association is registered as a nonprofit corporation under the laws of the State of Utah. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or re-incorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.
- 6.3 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner shall likewise succeed to such membership in the Association. 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 proportional interest and by the same type of tenancy in which title to the Unit is held.
- 6.4 Voting. Except as otherwise disallowed or provided in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners. Because each Unit has an equal Allocated Interest, each Unit shall be deemed to have one (1) vote.
- 6.5 Board. The governing body of the Association shall be the Board. Except as otherwise provided in this Declaration or the Bylaws, the Board may act in all instances on behalf of the Association. The Board may also, as it deems appropriate, recommend amendments to the Bylaws and Declaration and adopt, amend, and repeal the Rules.
- 6.6 Qualification of Board Members. The qualifications of Board Members shall be as provided in the Bylaws.
- 6.7 Election of Board Members. At each election, the Owner of each Unit shall be entitled to vote the Allocated Interest appurtenant to the Unit for each Board Member seat to be filled. The election of Board Members shall be as provided in the Bylaws.
- 6.8 Status and General Authority of Board. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Board' name. The Board shall have, and is hereby granted, the following authority and powers:
- (a) The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.
 - (b) The power to sue or be sued.
 - (c) The authority to enter into contracts which in any way concern the Condominium Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

- (d) The power and authority to borrow money and pledge collateral upon approval of a majority of a quorum present in person or by proxy at a meeting of the Owners called for such purpose.
- (e) The authority to promulgate such reasonable Rules, guidelines, policies, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Condominium Project is maintained and used in a manner consistent with the Act and this Declaration.
- (f) The authority to establish procedures for the conduct of its meetings, including, but not limited to the power to decide what portion of the meeting shall be closed for executive session, to regulate record keeping, and to allow, control, or prohibit the electronic reproduction (video or audio) of Board meetings.
- (g) The authority to contract for discretionary utility services such as telephone, cable, and internet, and allocate the usage fees as an individual or benefited assessment to Owners who use such services, or to allocate them as a Common Expense to all Owners, provided such services are approved by a majority of the Allocated Interest of Owners in attendance, whether by person or by proxy, as a duly called Member meeting. If utility usage fees are allocated as a Common Expense, the utility services must be capable of providing the customary uninterrupted and secure level of services that is appropriate and necessary for Owners.
- (h) The power and authority to create advisory committees and appoint advisors to the Board.
- (i) Any powers and authority provided elsewhere in this Declaration or the Bylaws.
- (j) The powers and authority to assign and/or lease parking stalls to Owners or Occupants.
- (k) The powers and authority to select, hire, and fire employees and/or independent contractors for the Association.
- (l) The authority to authorize new capital improvements to the Condominium Project up to and equal to twenty thousand dollars (\$20,000), the sum to be allocated to Units according to the Allocated Interests. New capital improvements in excess of twenty thousand dollars (\$20,000) require the approval of a majority of the Allocated Interest of Owners in attendance, whether by person or by proxy, as a duly called Member meeting. The maintenance, repair, and replacement of existing Common Area is not considered a new capital improvement. If the capital improvement is included or considered in an Association reserve analysis, it is not a new capital improvement.
- (m) The power and authority to perform any and all other acts not reserved specifically to the Owners, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

6.9 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.

6.10 Remedies Available to the Board. In addition to any other remedies allowed or provided in this Declaration for any violation of the Governing Documents, the Board may: (1) impose and levy fines for violation of the Declaration, Bylaws, or Rules; (2) terminate an Owner's right to receive utility services paid as a Common Expense; (3) terminate an Owner's right to access and use Common Area, except that access to one's Unit shall not be restricted; (4) terminate an Owner's right to vote while an Owner is delinquent in the payment of any Assessment or is in violation

of the Declaration, Bylaws, or Rules; (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

- 6.11 Reserve Fund. The Association shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Areas, the amount of which shall be determined in the discretion of the Board, or as otherwise required by the Act. Reserve funds may be collected as part of the annual Assessments. To the extent the Board deems necessary, surplus monies of the Association shall be retained as additional reserves.
- 6.12 Availability of Condominium Governing Documents. The Association shall maintain current copies of the Governing Documents and the Association's own books, records, and financial statements (as required by the Act and further prescribed by the Bylaws) available for inspection, upon written request, at a mutually convenient time during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).
- 6.13 Managing Agent. The Board may contract with or hire a professional Manager to assist the Board in the management and operation of the Condominium Project. The Board may delegate such of its powers and duties to the Manager as it deems appropriate. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

ARTICLE VII BUDGETS, EXPENSES, AND ASSESSMENTS

- 7.1 Annual Budget. The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Area, and for the administration, management, and operation of the Association, including any prior year deficits. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted.
- 7.2 Covenant to Pay Assessments/Assessment Lien. Each Owner is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with any interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with interest, late fees, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.
- (a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys' fees, if any, against the latter for his or her share of any Assessments levied by the Association up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.
- (b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as

required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

- 7.3 Purpose of Assessments. The Assessments levied by the Association shall be used for the purposes of: promoting the safety and welfare of the Owners; carrying out the management, maintenance, care, preservation, and protection of the Condominium Project; enhancing the quality of life in the Condominium Project; and maintaining and enhancing the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.
- 7.4 Annual Assessments. The Association shall fix the amount of the Annual Assessment against each Unit based on the annual budget. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments (or in other such installments as the Board may determine), on dates established by the Board. At least thirty (30) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.
- 7.5 Special Assessments. In addition to the Annual Assessments, the Board in its sole discretion may levy a Special Assessment up to or equal to twenty thousand dollars (\$20,000) per calendar year (to be divided among the Units according to their Allocated Interest), payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Any Special Assessments in a calendar year exceeding twenty thousand dollars (\$20,000) require approval by either a majority of the Allocated Interests held by Owners in attendance, whether by person or by proxy, at a duly called Member meeting, or by a majority of the Allocated Interests through a vote of the Owners conducted outside of a meeting. Notice in writing of the amount of any Special Assessment and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.
- 7.6 Benefited Assessments. In addition to Annual Assessments and Special Assessments authorized above, the Board may levy Benefited Assessments against particular Units to cover the costs of the Association in providing special benefits, items, or services to the particular Units. Benefited Assessments may be levied in advance of the Association providing such special benefits, items, or services to particular Units and shall be imposed upon all benefited Units according to their Allocated Interest.
- 7.7 Individual Assessments. In addition to Annual, Special, and Benefited Assessments, authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Association in enforcing the Governing Documents against that Unit and Owner, including any attorneys' fees incurred; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her

Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board; (d) nonpayment of a reinvestment fee as provided in this Article VII; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

- 7.8 Allocation of Assessments. Except as otherwise provided herein, Assessments (other than Individual Assessments) shall be imposed upon all Units according to their Allocated Interest.
- 7.9 Rules Regarding Billing and Collection Procedures. The Board may adopt Rules setting forth procedures for the purpose of levying the Assessments provided for in this Declaration and for the billing and collection of those Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident of the Unit of the Owner.
- 7.10 Certificate Regarding Assessments / Payoff Information. Upon the written request of an Owner, the Association shall issue a certificate stating whether or not all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act. Upon written request for payoff information needed in connection with the financing, refinancing, or closing of a sale of any Unit, the Association may charge a reasonable fee of up to fifty dollars (\$50), or an amount greater if so provided in the Act, to provide such payoff information.
- 7.11 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Condominium Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment at the discretion of the Board.
- 7.12 Application of Excess Assessments. In the event the amount assessed to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board deems appropriate. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.13 No Offsets. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount or the withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

- 7.14 Reinvestment Fee. The Association shall have the right to collect a "Reinvestment Fee" assessment in accordance with this Section and Utah Code §57-1-46. The following terms and conditions shall govern Reinvestment Fees:
- (a) Upon the occurrence of any sale, transfer, or conveyance of any Unit as reflected in the office of the Tooele County recorder, regardless of whether it is pursuant to the sale of the Unit or not (as applicable, a "Transfer"), the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee.
 - (b) The Board shall have the power to set the amount of the Reinvestment Fee, in the Board's sole discretion, provided that in no event shall amount of the Reinvestment Fee exceed the maximum rate permitted by law. If no amount is otherwise set by the Board, the amount of the Reinvestment Fee shall be the maximum rate permitted by law.
 - (c) The Association shall not levy or collect a Reinvestment Fee for any of the Transfer exempted by Utah Code §57-1-46.
 - (d) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment and, if unpaid, may be collected in the same manner as an Individual Assessment.

ARTICLE VIII EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

- 8.1 Due Date and Delinquency. Assessments shall be paid in a timely manner. Payments are due on the first (1st) day of the month or such other due date established for the payment of Assessments. Payments are delinquent if not received by the due date. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more or all of the sanctions granted in this Article.
- 8.2 Collection Charge. If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of eighteen percent (18%) per annum, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article VII. Payments shall first be applied to attorneys' fees and costs, collection charges, interest, and/or late fees and then unpaid Assessments. Late fees may be assessed each month until the delinquent Assessment is paid in full.
- 8.3 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner(s), or to advance lien foreclosures against the Unit of such Owner(s), for the collection of delinquent Assessments.

- 8.4 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including a reasonable attorney's fee incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage, and convey such Unit.
- 8.5 Trust Deed Provisions. Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Governing Documents. All notices of default and other communications material to an exercise of the power of sale shall be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.
- 8.6 Suspension of Votes. The Board may suspend an Owner's right to vote on any matter for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.
- 8.7 Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas (except an Owner's right to access his/her Unit may not be restricted). Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least fourteen (14) days to pay the past due balance.
- 8.8 Unpaid Assessments and Future Lease Proceeds. If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment is due, the Board may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

ARTICLE IX PROPERTY RIGHTS IN COMMON AREA

- 9.1 General Easements to Common Area and Units.
- (a) Subject to this Declaration and the Rules, each Owner shall have an equal right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, contract purchaser, Occupant, or Person who resides in such Owner's Unit.
- (b) The Association, acting through the Board or its authorized agent, shall have nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and

to maintain, repair, replace, or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification of at least 48 hours, unless emergency situations demand immediate access. The Association, acting through the Board or its authorized agent, shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with reasonable notification, unless emergency situations demand immediate access.

- 9.2 Easements for Encroachments. In the event that, by reason of the construction, reconstruction, settlement, movement, or shifting of any part of a building, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Unit or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner in the Common Areas if such encroachment occurred due to the willful conduct of such Owner occurring after the date on which this Declaration is recorded.
- 9.3 Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, internet services, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association, through the Board, shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, internet, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no such easement can be granted if it would permanently or significantly interfere with the use, occupancy or enjoyment by any Owner or such Owner's Unit.
- 9.4 Limitation on Easement - Suspension of Owner's Rights. An Owner's equal right and easement of use and enjoyment concerning the Common Area shall be subject to the following:
- (a) The right of the Association, provided for in this Declaration, to suspend the Owner's voting right in the Association and the Owner's right to the use of any of the Common Area;

- (b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and
- (c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.

ARTICLE X USE RESTRICTIONS

- 10.1 Rules and Regulations. The Board shall have authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Condominium Project is maintained and used in a manner consistent with the Governing Documents. Owners and Occupants shall at all times obey the Rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such Rules shall apply and be binding upon all Owners and Occupants of the Units. The Rules may address any issues, including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board' determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive. Violations of Rules may result in fines levied by the Board. Fines may be levied pursuant to a schedule of fines the Board adopts for the Association.
- 10.2 Occupancy and Use. All Units shall be occupied and used only as private single-family residences.
- 10.3 Common Areas. The Common Areas shall be used for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners. No Owner may obstruct the Common Areas or place anything thereon without the prior written consent of the Board.
- 10.4 Nuisance. No noxious or offensive activity shall be carried on or upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. Illegal drugs are strictly prohibited in the Condominium Project. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any Restrictions or Rules adopted by the Board, or any laws, ordinances, statutes, rules, or regulations of any local, county, state, or federal body. Any such violations shall be deemed a nuisance under this Section.
- 10.5 External Fixtures. No external items that are be permanently attached to the exterior of Units may be installed or replaced without prior Board approval.
- 10.6 Window Covers. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, blankets, flags, rugs, foil, sheets, and the like.

- 10.7 Repairs. The Board may adopt Rules regulating the repairs of any machinery, equipment or fixtures, including without limitation, motor vehicles, in the Condominium Project.
- 10.8 Unightly Items. All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board.
- 10.11 Animals and Pets. Domestic pets are allowed in Units. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Condominium Project. All dogs must be on a leash whenever outside of a Unit. No fences, cages, or other pet enclosures may be constructed or placed on the Common Areas without prior Board approval. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it lunges at passersby or chases passing vehicles. Pets may not be tied or tethered in the Common Area. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet. The Association may also cause pets to be removed from the Condominium Project whose presence or actions violate this Section. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration.
- 10.12 Unit Leasing. Leasing of Units is prohibited, except as otherwise specifically provided in this Section. Notwithstanding anything to the contrary in the Declaration or Bylaws, all leasing and Non-Owner Occupancy of a Unit shall be governed by this Section and any Rules adopted as allowed in this Section.
- 1) Definitions. For the purpose of this Section:
 - (a) "Non-Owner Occupied" means:
 - (i) For a Unit owned in whole or in part by a natural individual or individuals, the Unit is occupied by someone, but no individual Owner occupies the Unit as the individual Owner's primary residence; or
 - (ii) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.
 - 2) Exemptions. The following Units may be Non-Owner Occupied:
 - (a) A Unit owned by a person in the military for the period of the Owner's deployment.
 - (b) A Unit occupied by the Owner's parent, child, or sibling and their immediate family.

- (c) A Unit whose Owner is relocated by the Owner's employer for a period of two (2) years or less.
 - (d) A Unit owned by an entity that is occupied by an individual who has voting rights in the entity and who has a twenty-five percent (25%) or greater share of ownership in the entity.
 - (e) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current occupant of the Unit; or (2) the parent, child, spouse, or sibling of the current occupant of the Unit.
 - (f) A Unit whose Owner is away on charitable or religious purposes for a period of two (2) years or less, provided such Owner notifies the Board of the Owner's intent and plans.
 - (g) A Unit that the Board, in its sole discretion, has determined qualifies for a hardship exemption (i.e. for health reasons, unique circumstances of the Owner, etc.), provided that no more than four (4) Units may be leased pursuant to this Subsection (g) at one time. An Owner who wishes to lease under this Subsection (g) shall submit a written application to the Board that includes the following: (i) an explanation of the Owner's circumstances, including the Owner's reasons why the inability to lease the Unit would result in undue hardship to the Owner; (ii) a copy of the proposed lease; and (iii) such other information at the Board may reasonably require. If the Board approves the hardship exemption application, the Owner may lease his or her Unit for such duration as the Board reasonably determines is necessary to prevent undue hardship.
- 3) Grandfather Provision. Units being leased at the time this Declaration is recorded with the Tooele County Recorder shall be grandfathered and allowed to continue leasing until the earliest of the following occurs: (i) the Owner (or an officer, director, trustee or beneficiary of the entity that owns the Unit) occupies the Unit; or (ii) the ownership of the Unit is transferred; or (iii), if the Unit is being leased under a current hardship exemption, the end of the lease period approved by the Board.
- 4) Lease Provisions. No Owner shall be permitted to lease his or her Unit for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. Daily, weekly, or other short-term leases, including Airbnb or other similar leasing practices are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Unit. No Unit shall be leased until the Association has received a copy of the lease agreement.
- 5) Compliance. The lease shall provide that Non-Owner Occupants (i.e., tenants) are subject to and shall abide by the Governing Documents. A Non-Owner

Occupant's failure to comply with the Governing Documents shall constitute a breach of both the lease and the Governing Documents. Within ten (10) days after delivery of a written notice from the Association of the creation of a nuisance or violation of the Governing Documents by a Non-Owner Occupant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default or violation, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

- 6) Joint and Several Liability of Owner and Non-Owner Occupants. The Owner of a Unit shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Declaration, Bylaws and Association rules and the Owner and Occupant shall be jointly and severally liable for any fines for violations thereof.
- 7) Remedies for Violation. If an Owner fails to comply with this Section or leases a Unit in violation of this Section, the Board may:
 - (a) Assess fines against the Owner and Owner's Unit pursuant to a schedule of fines adopted by the Board.
 - (b) Regardless of whether any fines have been imposed, proceed with any other available legal remedies, including, without limitation, an action to require the Owner to terminate the lease agreement and remove the Non-Owner Occupant.
 - (c) Pursuant to Rules adopted under this Section, if the Board determines that a Non-Owner Occupant has violated a provision of the Governing Documents, the Board may require an Owner to terminate the lease agreement with that Non-Owner Occupant.
 - (d) In addition to any other remedy for non-compliance, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager, if any, shall not have any liability for any action taken pursuant to this subsection and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subsection.
- 8) Costs and Attorney Fees. Fines, charges, and expenses incurred in enforcing the Governing Documents with respect to a Non-Owner Occupant, and for any costs incurred by the Association in connection with any action under this Section, including reasonable attorney fees (regardless of whether any lawsuit or other

action is commenced), are Individual Assessments against the Owner and Unit which may be collected and foreclosed on by the Association.

- 10.13 Recreational Vehicles. No recreational vehicles including, but not limited to, RVs, dirt bikes, campers, boats, snowmobiles, or other similar vehicles, shall be stored or kept on the Condominium Project, unless permitted under the Rules or approved in advance by the Board.
- 10.14 Business Activities. No gainful occupation, business, trade, or other nonresidential use shall be conducted in or from any Unit. Notwithstanding the foregoing, business activities that meet the following requirements are allowed: (1) only normal residential activities would be observable outside of the Unit; (2) the business activity does not involve persons coming on to the Condominium Project who do not reside in the Condominium Project in a manner and/or amount that would constitute a nuisance; (3) the business activity does not involve the solicitation of Occupants or Owners; (4) the business will not result in the increase of the cost of the Association's insurance; and (5) the activities would not be in violation of applicable local ordinances.
- 10.15 No Subdivision of Units. No Unit shall be split, subdivided, or separated into two (2) or more Units without prior written Board approval.
- 10.16 Architectural Control. No exterior changes shall be commenced, erected, maintained, made, or done without the prior written approval of the Board or any committee established by the Board for that purpose. No interior changes that may affect another Unit may be commenced, erected, maintained, made, or done without prior notification to the Board. All work that requires a building permit shall be performed by a licensed contractor.
- 10.17 Smoking. Smoking is prohibited in the Common Areas of the Condominium Project and shall constitute a nuisance. Smoke may not drift from one Unit to another Unit, which shall constitute a nuisance. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, electronic cigarette, vaping device, other product containing any amount of tobacco, marijuana, or other similar heated, smoldering, or lit product. The Board may adopt additional Rules to address smoking within the Condominium Project.
- 10.18 Parking. Parking in the Condominium Project is permitted only in garages and designated areas in the Common Area. Parking is prohibited in any location that would unreasonably impair vehicular or pedestrian access, or that will interfere with the functions of the Association and Residents. All parked vehicles must be regularly used and display current registration tags. The Board may adopt additional Rules relating to the parking of vehicles within the Condominium Project, including, without limitation: the size and dimensions of the vehicles parked within the Condominium Project; the admission and temporary parking of vehicles within the Condominium Project; the use of unassigned parking spaces; the right to remove or cause to be removed any vehicles that are improperly parked; guest parking; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.
- 10.19 Solar Energy Systems. Solar energy systems are prohibited from being constructed or installed on any part of the Common Area in the Project. Notwithstanding the foregoing, the Board may elect to allow solar energy systems in the Project, and if the Board does so, then

the Board may adopt Rules and regulations for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such Rules must require that the installation be an integral and harmonious part of the architectural design of the Condominium Project. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system and shall be responsible for any damage to the roofs, shingles, or other Common Areas caused by such solar energy system. Owners shall be required to remove and reinstall solar energy systems when the surrounding roof or shingles need to be repaired. The Board shall assess any costs incurred by the Association related to the installation, operation, and maintenance of an energy conservation system to the requesting Owner(s) or benefitted Owner(s) in the Board's sole discretion. The costs to the Association arising under this Section shall be assessed and collected as an Individual Assessment.

- 10.20 Firepits/BBQs. No solid fuel firepits are permitted in the Condominium Project. No pellet smokers or BBQs are permitted on the upper decks of Units.
- 10.21 Variances. The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article X if the Board determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on other Owners or Occupants and is consistent with the high quality of life intended for residents. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by a majority of the then existing Board. The Board shall not have any right or authority to deviate from this Declaration except as specifically provided for in this Section. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or a majority of the Board, unless it is reduced to writing and signed as required in this Section.

ARTICLE XI CHANGE IN OWNERSHIP

The Board shall maintain up-to-date records showing the name of each Owner, the address of such Owner, and the Unit owned by each Owner. In the event of any transfer of an interest in a Unit, within fourteen (14) days after the date of such transfer, the transferee shall furnish the Board with written notice containing evidence establishing that the transfer has occurred and that the deed or contract accomplishing the transfer is of record in the office of the Tooele County Recorder. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, and the date of the sale or transfer. The Board 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 Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the Tooele County Recorder. Prior to the receipt of the written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless

the Board is otherwise advised. As outlined in Article VII, a Reinvestment Fee may be assessed at each change of ownership, as allowed by law.

ARTICLE XII DESTRUCTION OR DAMAGE

In the event of destruction or damage of part or all of the improvements in the Condominium Project, the procedures of this Section shall apply.

- (a) If the proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.
- (b) If less than 75% of the Condominium Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Owners shall be assessed for any deficiency on the basis of their respective appurtenant fractions of the Allocated Interest, said assessment becoming a lien on the Units as provided in the Act.
- (c) If 75% or more of the Condominium Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Owners within 100 days after the destruction or damage by a vote of at least 67% of the entire Allocated Interest of the Condominium Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.
- (d) If 75% or more of the Condominium Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not sufficient to accomplish restoration, and if the Owners do not, within 100 days after destruction or damage and by a vote of at least 67% of the entire Allocated Interest of the Condominium Project, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Tooele County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of the Act at §57-8-31, Utah Code Annotated, shall apply and shall govern the rights of all parties having an interest in the Condominium Project or any of the Units.
- (e) Any reconstruction or repair which is required to be carried out by this Section shall be accomplished at the direction of the Board. Any determination which is required to be made by this Section regarding the extent of damage to or destruction of the Condominium Project improvements shall be made as follows:
 - 1) The Board shall select three M.A.I. (Members of the Appraisal Institute) appraisers; each appraiser shall independently estimate the percentage of Condominium Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Section shall be the median of the three estimates.

ARTICLE XIII TAXES

It is understood that under the Act, each Unit, together with its Allocated Interest in the Common Areas in the Condominium Project, is deemed a parcel and subject to separate assessment and taxation by each assessing Unit and special district for all types of taxes authorized by law. Each Owner will, accordingly, pay and discharge any and all taxes which may be assessed against such Owner's Unit.

ARTICLE XIV INSURANCE

NOTICE: The Association's insurance policies do not cover the personal property or personal liability of the Owners or their Occupants.

14.1 Insurance. The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

14.2 Property Insurance.

(a) Hazard Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Condominium Project, including the Common Area, and all buildings including all Units, permanent fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or otherwise permanently part of or affixed to Common Areas, or Units, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

3) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Condominium Project's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the Condominium Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

1) Except as provided in Subsection (d) below, the Association's policy provides primary insurance coverage;

2) Notwithstanding Subsection 1) above, and subject to Subsection 3) below:

i. the Owner is responsible for the Association's policy deductible; and

ii. the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

3) An Owner that has suffered damage to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and

4) If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit, the Association may levy an Individual assessment against the Owner for that amount.

(c) Association's Obligation to Set Aside Property Insurance Deductible. The Association shall set aside an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(d) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is

considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

- (e) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner his/her obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- (f) **Flood Insurance.** If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance may be maintained covering the Condominium Project, or, at a minimum, that portion of the Condominium Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Condominium Project located within a designated flood hazard area; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. If the Condominium Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (g) **Earthquake Insurance.** The Association may purchase earthquake insurance. If the Board elects not to purchase earthquake insurance, a vote of a majority of the Allocated Interest of Owners in attendance, whether by person or by proxy, as a duly called Member meeting may veto the decision of the Board. If the Owners at the meeting veto the decision to not purchase earthquake insurance, the Board shall purchase earthquake insurance within (60) days of the vote.

14.3 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

14.4 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain

books and records, failure to enforce the Condominium Project's Documents, and breach of contract (if available). This policy shall, if reasonably available, include: (1) coverage for volunteers and employees, (2) coverage for monetary and non-monetary claims, (3) coverage on claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

- 14.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (2) provide coverage for theft or embezzlement of funds by: (a) officers and Board Members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.
- 14.6 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.
- 14.7 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 14.8 Association has the Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units.
- 14.9 Insurance Trustee. In the discretion of the Board or upon written request executed by Owners holding at least 50% of the Allocated Interest, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Article as the Owners or Board (as the case may be) shall require.
- 14.10 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

- 14.11 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.
- 14.12 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board shall be protected in relying on the written report furnished pursuant to this Section provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.
- 14.13 Applicable Law. This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8-43 that became law in 2011, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

**ARTICLE XV
EMINENT DOMAIN**

- 15.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.
- 15.2 Partial Taking of a Unit. Except as provided in Section 15.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the

partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

- 15.3 Taking of Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Common Area, the Board shall, as soon as practicable, cause the award attributable to the Common Area so taken to be utilized for the purpose of repairing or restoring the remaining Common Area, and the portion of the award not used for such restoration shall be divided among the Owners in proportion to their Allocated Interest in the Common Area before the taking.
- 15.4 Taking of Entire Condominium Project. In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 15.5 Priority and Power of Attorney. Nothing contained in this Article XV shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

ARTICLE XVI RIGHTS OF LENDERS – LENDER PROTECTIONS

- 16.1 Notice of Lenders. A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval, or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 16.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association.
- 16.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 16.3 Relationship with Assessment Liens.
- (a) The lien provided for in Article VII for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.
 - (b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration

shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

- (c) Without limiting the provisions of Section 16.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed, or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
- (d) Nothing in this Section 16.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

16.4 Required Lender Approval. Except upon the prior written approval of all Lenders neither the Association nor the Board shall be entitled to abandon or terminate by an act or omission the legal status of the Condominium Project. A Lender's consent is presumed if:

- (a) Written notice of the proposed action is sent by certified or registered mail to the Lender's address listed with the Association;
- (b) Sixty (60) days have passed after the day on which notice was mailed; and
- (c) The Association has not received a written response from the Lender consenting to or refusing to accept the amendment or action.

16.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of the Governing Documents and other books and records of the Association during normal business hours; and
- (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

16.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender; and
- (b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

ARTICLE XVII TERMINATION

- 17.1 Required Vote. Except as otherwise provided in Articles XII (Destruction or Damage) and XV (Eminent Domain), the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.
- 17.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Tooele County Recorder and is effective only upon recordation.
- 17.3 Sale of Condominium Project. A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 17.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 17.1 and 17.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and the Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 17.5 Allocation upon Termination. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

**ARTICLE XVIII
RIGHT OF ENTRY**

The Association acting through the Board or its duly authorized agent shall have the right upon reasonable notice of at least forty-eight (48) hours to enter upon or into any Unit, without trespass, as needed to review and investigate insurance claims or losses, to access property for which the Association is responsible to maintain, repair, or replace if such is more readily accessible from inside a Unit, to abate any unclean or unsanitary condition, and/or to fulfill its obligations. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Condominium Project, including the sound or sight of running water in a Unit reasonably believed to be causing damage to a Unit, the smell or sight of smoke in a Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Any repair costs incurred by the Association in addressing an emergency or abating a nuisance shall be assessed against the Owner as an Individual Assessment.

**ARTICLE XIX
OBLIGATION TO COMPLY HEREWITH**

Each Owner and Occupant shall comply with the provisions of the Act, the Governing Documents, and all agreements and determinations lawfully made and/or entered into by the Board or the Association acting in accordance with their authority. The Association, through the Board, shall have the power and authority in its own name, on its own behalf, or in the name and behalf of any Owner(s) who consents thereto, to enforce each provision of the Governing Documents and lawful acts of the Board, including the right to prevent any violation of such, and the right to recover damages and other sums, including fines, for such violation(s). Any costs and expenses, including attorneys' fees, incurred by the Association in enforcement against an Owner, whether or not a lawsuit is filed, shall be an Individual Assessment against the Owner. The prevailing party in any lawsuit for enforcement of any provision (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees. Occupants, guests, and invitees shall be jointly and severally liable with the Owner for any fine assessed or Individual Assessment assessed as a result of a violation.

**ARTICLE XX
INDEMNIFICATION OF BOARD**

Each Board Member shall be indemnified and held harmless by the Association against all costs, expenses, and liabilities whatsoever, including, without limitation, attorneys' fees reasonably incurred by him in connection with any proceeding in which he may become involved by reason of his or her being or having been a Board Member; provided, however, the foregoing indemnification shall not apply if the loss, expense, or liability involved resulted from the willful or intentional misconduct of the Board Member.

**ARTICLE XXI
CONSENT IN LIEU OF VOTE**

In any case in which the Act or the Governing Documents require the vote of a stated percentage of the Condominium Project's Allocated Interest for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the stated percentage of the Allocated Interest as outlined and set forth in the Act or the Utah Revised Nonprofit Corporation Act.

**ARTICLE XXII
AMENDMENTS**

This Declaration may be amended only upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. Amendments to the Declaration shall be proposed by either a majority of the Board or by Owners holding at least fifty percent (50%) of the Allocated Interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Any amendment(s) shall be effective upon recordation in the office of the recorder of Tooele County, State of Utah. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section.

**ARTICLE XXIII
GENERAL PROVISIONS**

- 23.1 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 23.2 Cumulative Remedies. All rights, options, and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.
- 23.3 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.
- 23.4 Covenants to Run with the Land. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors.

By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

- 23.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.
- 23.6 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 23.7 Attorneys' Fees. If the Association obtains legal counsel to enforce or defend any of the provisions or requirements of the Governing Documents, or for a purpose the Board reasonably believes will involve litigation, the Association may assess its reasonable attorneys' fees and costs to the party against whom enforcement is sought or against the party making the request or demand, regardless of whether a lawsuit is ultimately initiated or not. In the event litigation is pursued under the terms of the Governing Documents, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.
- 23.8 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- (a) Except as otherwise provided herein or in the Bylaws, notice to an Owner shall be delivered personally, by text message, by email, or placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit or posted on the front or back door of the Unit. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. Any notice delivered by email or text message shall be deemed delivered when sent. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. Notice by email is not proper notice if an Owner sends a written request to the Board stating that the Owner will not accept notices by email. Owners shall register an email address, a phone number that is capable of receiving text messages, and a mailing address with the Association.
 - (b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered upon deposit.
 - (c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, or to any Lender

or Lenders, in any manner that this Section 23.8 allows, shall be deemed conclusive proof of such mailing or delivery.

(d) Notice to the Association shall be delivered personally or by first-class mail, postage prepaid, to the office of the Manager of the Association (if any) or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any) or if there is none, to the President of the Association. Notice to the Association may also be delivered by e-mail if the Association designates an email address for such purpose.

- 23.9 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 23.10 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board Member or officer acted in good faith within the scope of such person's duties.
- 23.11 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.
- 23.12 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that Association, and the Board, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article XIV above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

EXHIBIT A
Legal Description and Parcel Numbers

All Units (Units 1B-6B, 7C-30C, 31B-42B, 43C-58C, 60C-65C, and 66A-75A) and Common Area as shown on the Benchmark Village Plat, recorded in the Office of the Tooele County Recorder.

Parcel Numbers:

- 08-009-0-0001
- 08-008-0-0002
- 08-009-0-0003
- 08-009-0-0004
- 08-008-0-0005
- 08-009-0-0006
- 08-012-0-0007
- 08-012-0-0008
- 08-012-0-0009
- 08-012-0-0010
- 08-012-0-0011
- 08-012-0-0012
- 08-012-0-0013
- 08-012-0-0014
- 08-012-0-0015
- 08-012-0-0016
- 08-012-0-0017
- 08-012-0-0018
- 08-013-0-0019
- 08-013-0-0020
- 08-013-0-0021
- 08-013-0-0022
- 08-010-0-0023
- 08-010-0-0024
- 08-010-0-0025
- 08-010-0-0026
- 08-010-0-0027
- 08-010-0-0028
- 08-010-0-0029
- 08-010-0-0030
- 08-009-0-0031
- 08-009-0-0032
- 08-010-0-0033
- 08-010-0-0034

08-010-0-0035
08-010-0-0036
08-010-0-0037
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08-010-0-0039
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08-010-0-0041
08-010-0-0042
08-011-0-0043
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08-013-0-0050
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08-013-0-0052
08-013-0-0053
08-013-0-0054
08-013-0-0055
08-013-0-0056
08-013-0-0057
08-013-0-0058
08-015-0-0060
08-015-0-0061
08-015-0-0062
08-015-0-0063
08-015-0-0064 (Owned by Association, 64 & 65 Combined)
08-010-0-0066
08-010-0-0067
08-009-0-0068
08-009-0-0069
08-009-0-0070
08-009-0-0071
08-009-0-0072
08-009-0-0073
08-009-0-0074
08-009-0-0075

(73 Total Parcels)

EXHIBIT C

Bylaws of Benchmark Village Homeowners Association, Inc.

These Bylaws of BENCHMARK VILLAGE HOMEOWNERS ASSOCIATION, INC. ("Bylaws") are effective upon recording in the Tooele County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

1. These Bylaws shall amend and completely replace all bylaws, and any amendments thereto, executed prior to the date of these Bylaws whether recorded or not.
2. These Bylaws are adopted in order to complement the Declaration and to eliminate ambiguity, to further define the rights of the Association and the Owners, to provide for the ability to more easily govern and operate the Association, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein are defined in Article I of the Amended and Restated Declaration of Condominium of Benchmark Village (herein this "Declaration") and shall be given the same meaning and effect.

ARTICLE II APPLICATION

All present and future Owners, Occupants, and any other persons who may use the facilities of the Condominium Project in any manner are subject to these Bylaws. The mere acquisition or rental of any of the Units or parts thereof, or the mere act of occupancy or use of any said Units or part thereof or the Common Areas will signify that these Bylaws are accepted, ratified, and will be complied with by said persons.

ARTICLE III OWNERS

3.1 Annual Meetings. The annual meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the annual meeting may be electing Board Members, approving the budget by a majority of the quorum present at the meeting, and transacting such other business as may come before the meeting. The Board may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.2 Special Meetings. Special meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than thirty-three percent (33%) of the Allocated Interest of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the

purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request.

3.3 Place of Meetings. The Board may designate any place in the Tooele County limits reasonably convenient for the Owners of the Association as the place of meeting for any annual or special meeting. Meetings may also be held, either wholly or in part, via Zoom, Facetime, or any similar live programs, in the discretion of the Board or Directors.

3.4 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Owners. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) or less than fourteen (14) days prior to the meeting. Such notice may be emailed, hand-delivered, mailed, texted, posted on an official Association website, or delivered in another manner allowed under the Acts. If emailed, such notice shall be deemed delivered when sent to the Owner's email address registered with the Association. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Owner at the Owner's address registered with the Association, with first-class postage thereon prepaid. Each Owner shall register with the Association such Owner's current email address and mailing address for purposes of notice hereunder. Such registered email and mailing addresses may be changed from time to time by the Owner by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door.

3.5 Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 72 hours prior to the commencement of the meeting.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Condominium Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 Quorum. Those Owners present in person or by proxy at any duly called meeting that is called and held in compliance with the requirements of this Article, shall constitute a quorum for the adoption of decisions.

3.8 Proxies. Owners shall be entitled to vote in person or by proxy at each meeting. A proxy given to a person who represents an Owner at an Association meeting shall be in writing, dated, and signed by such Owner or the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. If sent electronically, the Association must be able to verify the sender and that the sender is an Owner. A proxy shall set forth the matters or issues upon which the proxy holder is authorized to act during the meeting, and may allow the proxy holder to vote on any issue arising the meeting. A signature as required herein shall mean any indication that the document is from and consented to by the person who is

purported to have sent it, subject to verification by the Association. If a Unit is jointly owned, the proxy may be executed by any one (1) Owner of such Unit or the Owner's attorney. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner (Allocated Interest), as shown in the Declaration. Because each Unit has an equal Allocated Interest, each Unit shall be deemed to have one (1) vote. The affirmative vote of a majority of the voting interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owner, unless a greater proportion is required by the Articles, these Bylaws, the Declaration, or the Act. When more than one (1) Person owns an interest in a Unit, any Person who is the owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Unit, no vote shall be counted for that Unit. Only those Owners who are not delinquent in the payment of Assessments to the Association shall be entitled to vote (see Section 3.5 herein). Voting for any Association matter, including elections, may be done electronically, including online voting, so long as the Board can reasonably determine the validity of the vote. The Board may adopt additional Rules regarding such electronic voting, including timeframes for voting and other issues.

3.10 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver of any notice requirements.

3.11 Informal Action by Owners. Any action that is required or permitted to be taken at a meeting of the Owners may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by enough Owners such that the vote would have passed if all of Association Owners had been in attendance at a regularly called meeting.

ARTICLE IV BOARD OF DIRECTORS

4.1 General Powers. The property, affairs, and business of the Association shall be managed by the Board. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Act, the Declaration or these Bylaws, except such powers that the Articles, these Bylaws, the Declaration, or the Act vest solely in the Owners.

4.2 Number, Tenure, and Qualifications. The property, business, and affairs of the Association shall be governed and managed by a Board composed of seven (7) persons. Each Board Member shall be over the age of eighteen (18), shall be an Owner or a spouse of an Owner, and shall reside in the Condominium Project. Each Board Member shall serve for two (2) year terms, which terms shall be staggered so that elections are held every year. If Board Member terms become un-staggered for any reason, the Board may provide for the re-staggering of terms in a manner the Board deems appropriate. Directors may serve consecutive terms if reelected. If a Board Member

ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate.

4.3 Nominations. No more than sixty (60) or less than fifteen (15) days before an election to the Board is held, the Association shall notify the Owners of the election, of the number of upcoming vacancies that will filled at the election, and shall issue a call for nominations. Self-nominations are permitted. All nominees shall meet the qualifications for Board Members provided in the Declaration. The Board may from time to time amend this nomination procedure by resolution.

4.4 Election. The election of Board Members shall be made by a vote of the Owners. If the election of Board Members is not held during the Annual Meeting, or at any adjournment thereof, the Board may hold the election at a Special Meeting of the Owners. Pursuant to Section 3.9 above, the election may also take place electronically, including online voting, so long as the Board can reasonably determine the validity of the vote. During each election, the Owners (or their proxies, if the election takes place during an Annual or Special Meeting) may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The candidates receiving the largest percentage of voting interests shall be elected. Cumulative (i.e. an Owner casting all of his or her votes for the same candidate) or fractional voting is not permitted.

4.5 Quorum and Manner of Action. A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. In voting on Board matters, all Board Members present, except the Board Member who is serving as the President of the Association, shall vote. The majority of those votes shall constitute an act of the Board. In the case of a tie vote, the Board Member who is serving at the President of the Association shall vote and break the tie. The Board Members shall act only as the Board, and individual Board Members shall have no powers as such.

4.6 Regular Board Meetings. The Board shall hold regular meetings, at least twice yearly or as needed, at the discretion of the Board.

4.7 Special Board Meetings. Special meetings of the Board may be called by the President or a majority of the Board Members, however notice must be provided as set forth in Section 4.10. By unanimous consent of the Board, special meetings of the Board may be held without call or notice to the Board Members.

4.8 Open Meetings. Except as provided below in (a) through (f), all regular and special Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- a. Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- b. Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- c. Discuss a labor or personnel matter;
- d. Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- e. Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or

- f. Discuss a delinquent assessment.

For purposes of this Article IV, a Board meeting does not include a gathering of Board Members at which the Board does not conduct Association business.

4.9 Board Meeting Location. The Board may designate any place in Tooele County, Utah as the place of meeting for any regular or special Board meeting. Board meetings may also be held telephonically or by Zoom, Facetime, and similar live programs.

4.10 Notice of Board Meetings. At least forty-eight (48) hours before a regular or special Board meeting, notice of the meeting shall be given via email to each Board Member, and to each Owner who requests notice of such Board meetings, unless: (i) notice of the Board meeting is included in a meeting schedule that was previously provided to the Owner; or (ii) the Board meeting is to address an emergency and each Board Member receives notice of the Board meeting less than forty-eight (48) hours before the Board meeting. The notice shall be delivered to the Owner by email to the email address that the Owner provides to the Association, shall state the time, date, and location of the Board meeting, and shall provide the information necessary to allow the Owner to participate by telephone or electronic communication if a Board member will be participating via telephone or the same electronic communication.

4.11 Board Action. Notwithstanding noncompliance with Sections 4.8, 4.9, and/or 4.10, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with Sections 4.8, 4.9, and/or 4.10 may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.12 Compensation. No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Condominium Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.13 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at any time, with or without cause, at a special meeting of the Owners duly called for such purpose upon the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association. A Board Member may also be removed by the affirmative vote of a majority of the other Board Members if he or she, in any twelve (12) month period, misses, and is unexcused by a majority of the Board, either three (3) consecutive or seventy-five percent (75%) of the regularly scheduled Board meetings, or is more than sixty (60) days delinquent in the payment of Assessments.

4.14 Vacancies and Newly Created Board Memberships. If vacancies shall occur in the Board by reason of the death, resignation, disqualification, or removal by the other Board Members as provided in Section 4.13, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected hereunder to fill a vacancy shall serve for the unexpired term

of his or her predecessor, and any Board member appointed hereunder shall serve only until the next regularly scheduled annual meeting or special meeting held for the purpose of electing a successor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.15 Informal Action by Board Members. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Board Members or as otherwise allowed by the Utah Condominium Ownership Act or the Utah Revised Nonprofit Corporation Act.

4.16 Waiver of Notice. Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.17 Action Without a Meeting. The Board has the right to take any action in the absence of a meeting which it could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE V OFFICERS

5.1 Officers. The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board. The President, Vice President, Secretary, and Treasurer shall be Board Members.

5.2 Election Tenure and Qualifications. The officers of the Association shall be chosen by the Board at the first Board Meeting after each election is held, or at some other time as may be reasonable. Each officer shall hold such office until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board Member or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board at any time, with or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

5.6 The President. The President shall be the chief executive of the Association. The President shall preside at meetings of the Board and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting

including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 The Vice President. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

5.10 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee or may remove subordinate officers at any time.

6.2 Proceeding of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board.

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any committee designated by it thereunder.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

7.1 Indemnification No Board Member or officer shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member or officer performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member or officer of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that Board Member having heretofore or hereafter been a Board Member or officer of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member or officer, and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under any Bylaw, agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members and officers be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**ARTICLE VIII
RECORDS, FINANCES, AND AUDITS**

The Association shall maintain within the State of Utah all documents, information, and other records of the Association in accordance with the Declaration, these Bylaws, and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board.

8.1 General Records.

- a. The Board or the Manager for the Association shall keep detailed records of the actions of the Board and Manager; minutes of the meetings of the Board; and minutes of the Owner meetings of the Association.
- b. The Board shall maintain a book of resolutions containing the rules, regulations, and policies adopted by the Association and Board.
- c. The Board shall maintain a list of Owners.
- d. The Association shall retain within the State of Utah other records of the Association for not less than the period specified in applicable law.

8.2 Records of Receipts and Expenditures. The Board or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Condominium Project, itemizing the maintenance and repair expenses of the Common Areas or Association property and any other expenses incurred.

8.3 Bank Accounts. Each bank account of the Association shall have at least two (2) names on the account.

8.4 Financial Reports and Audits.

- a. An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to any mortgagees of Units who request the same.
- b. The Board may annually, at the expense of the Association, obtain an "accounting review" or "agreed upon procedures" by a certified public accountant or other similar financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Eligible Mortgagees of Units who request this information. From time to time the Board may also, at the expense of the Association, obtain an audit by a certified public accountant of the books and records of the Association. At any time, any Owner or Eligible Mortgagee may, at such Owner's or Eligible Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

8.5 Inspection of Records by Owners.

- a. Except as provided in Section 8.6 below, all records of the Association shall be reasonably available for examination by an Owner and any Eligible Mortgagee of a Unit pursuant to Rules adopted by resolution of the Board.
- b. The Board shall maintain a copy, suitable for the purposes of duplication of the following:

i. The Declaration, Bylaws, and any amendments in effect or supplements thereto, and Rules of the Association.

ii. The most recent financial statement prepared pursuant to Section 8.4 above.

iii. The current operating budget of the Association.

c. The Association shall, within no later than five days or upon a mutually agreeable time, after receipt of a written request by an Owner, furnish the requested information required to be maintained under subsection b. of this Section.

d. The Board, by resolution, may adopt reasonable Rules governing the frequency, time, location, notice and manner of examination and duplication of Association and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Section. The fee may include reasonable personnel costs incurred to furnish the information, including any and all fees the Association may be charged by its designee that assists the Association in furnishing this information, which may include managerial, legal, or accounting fees.

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

a. Personnel matters relating to a specific identified person or a person's medical records.

b. Contracts, leases, and other business transactions that are currently under negotiation to purchase or provide goods or services.

c. Communications with legal counsel that relate to matters specified in subsections a. and b. of this Section, or current or pending litigation.

d. Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.

e. Disclosure of information in violation of law.

f. Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or Rules;

g. Documents, correspondence, or management or Board of Director reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session.

h. Documents, correspondence, or other matters considered by the Board in executive session.

i. Files of individual Owners, other than those of a requesting Owner or requesting Eligible Mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

ARTICLE IX AMENDMENTS

9.1 How Proposed. Amendments to the Bylaws shall be proposed by either a majority of the Board or by Owners holding at least thirty-five percent (35%) of the Allocated Interest of the Association.

The proposed amendment(s) must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

9.2 **Adoption.** Amendments may be approved by the Association at a duly constituted meeting or by written ballot in lieu of a meeting for such purpose. These Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association.

9.3 **Execution and Recording.** An amendment shall not be effective unless and until certified by the President of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the Tooele County recorder's office.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year set forth below.

**BENCHMARK VILLAGE HOMEOWNERS
ASSOCIATION, INC.**



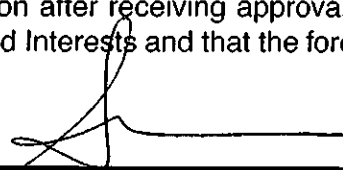
By: HOA President

William Hesford
Its: President

State of Utah)
) :ss
County of Salt Lake)

On this 17 day of October, 2022, personally appeared before me William Hesford, who being by me duly sworn, did say that he/she is the President of the Benchmark Village Homeowners Association, Inc.; that said instrument was

signed by him/her on behalf of said Association after receiving approval from Owners holding at least sixty-seven percent (67%) of the Allocated Interests and that the foregoing information is true and accurate to the best of his/her knowledge.



NOTARY PUBLIC



EXHIBIT D**MAINTENANCE ALLOCATION CHART**

This chart details the division of responsibility for maintenance and repair of property between the Association and the Owners. Note that in all cases, damage which is caused by an Owner (or his/her tenants or guests) (including damage caused by lack of maintenance or negligence in maintenance of areas for which the Owner is responsible) will be repaired at the expense of the Owner. Owners must seek prior Board approval for exterior changes to Units even if the maintenance responsibility is an Owner responsibility (see Section 10.16 (Architectural Control) of the Declaration).

	EXTERIOR BUILDING	HOA	OWNER	NOTES
1	Roofs	X		
2	Unit exterior	X		
3	Exterior Lights: Fixtures, bulbs, and damage repair	X	X	HOA is responsible for maintenance of the fixtures; Owners are responsible for bulb replacement and repair to any damage caused to the fixtures
4	Windows, frames, glass, and screens		X	
5	Window wells		X	
6	Foundation	X		
7	Address numbers	X		
8	Rain gutters and down spouts	X		
9	Exterior doors and door frames		X	
10	Doorbell		X	
11	Screens, screen doors, storm doors.		X	
12	Garages		X	
13	Covered Carports	X	X	HOA maintains, repairs, and replaces carport roofs, side walls, and support structure. Owners maintain, repair, and replace everything else.
14a	Patios—Interior, Walls, Floors		X	
14b	Patios—Roofs	X		
15	Decks		X	
16	Doorstep		X	
17	Porch		X	
18	A/C and evaporative coolers		X	
19a	Culinary water pipes—Serving a single Unit		X	
19b	Culinary water pipes—Serving more than one Unit	X		
20	Landscaping water	X		Unless metered to the Unit
21	Hose bib, spigot, faucet		X	
22	Vents, dryer and fans		X	Including cleaning

	INTERIOR	HOA	OWNER	NOTES
1	Attic	X		HOA shall have the right to access attics through adjoining Units, if necessary
2	Circuit breakers		X	
3	Insulation		X	
4	Chimney and flue	X	X	HOA responsible for areas from the ceiling and above; Owner responsible for areas below the ceiling
5	Flue		X	
6	Water heater		X	
7	Furnace		X	
8	Phone/cable lines		X	
9	Plumbing		X	Interior valves including water valve from the main line, pressure regulator
10	Smoke alarms, carbon monoxide detectors, alarm systems		X	

	GROUND	HOA	OWNER	NOTES
1	Mailboxes		X	If must be rekeyed, cost is responsibility of the Owner
2	Parking in Common Area	X		
3	Sprinkling system	X		
4	Landscaping	X		
5	Trees	X	X	Owner is responsible for trees inside Owner's patio area; HOA is responsible for all other trees
6	Perimeter Fence	X		
7	Patio fence or wall		X	Costs are to be shared equally between the owners who share a fence/wall
8a	Snow removal-roads and sidewalks	X		
8b	Snow removal-Unit entrances, and patios		X	
9	Signage	X		
10	Street lights	X		
11	Storm drains	X		
12a	Entrance Gate	X		
12b	Entrance Gate Openers	X	X	HOA orders the openers, cost is the responsibility of the Owner
13	Clubhouse	X		
14	Pool	X		
15	Playground	X		

	OTHER	HOA	OWNER	NOTES
1	Trash collection	X	X	HOA provides 1 trash can per Owner and may provide a common dumpster; Owner is responsible for any additional trash cans
2	Pest control, exterior of Units	X		
3	Pest control, interior of Units		X	
4	Sewer pipes, serving a single Unit		X	
5	Sewer pipe, serving more than one Unit	X		