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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
APOLLO SQUARE RESIDENTIAL CONDOMINIUM
ASSOCIATION, INC.,
A PLANNED UNIT DEVELOPMENT
IN
SALT LAKE COUNTY, UTAH

THIS AMENDED DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 22, IMPORTANT CONFLICT AND LITIGATION RESOLUTION AND AVOIDANCE PROVISIONS IN SECTION 23.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
APOLLO SQUARE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC.

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR APOLLO SQUARE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC. (hereinafter the "Residential Declaration") is effective as of the date it is recorded in the Salt Lake County Recorder's Office by Apollo Square, LLC (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property located in Salt Lake County, State of Utah, which is more particularly described in Exhibit C, attached hereto.

B. Declarant is developing a planned development know as Apollo Square, which is a mixed-use condominium planned unit development project with a mixture of multi-family and commercial uses.

C. Declarant also intends to create a residential condominium association covering the Project's Residential Units and related Residential Common Areas located exclusively in the second and third levels and fourth level terrace of the Project, which Residential Association will maintain Residential Common Areas related to the Residential Units and related portions of the Project, provide for management and operation of the Residential Association, levy and collect assessments, and administer and enforce the terms of the Residential Declaration for each Residential Unit.

D. Whereas, Declarant has recorded the declaration for Apollo Condominium Association, Inc., on 6/4/21 with the Salt Lake County's Recorder's Office as entry number 13682009, in Book 11185, beginning on page 4087 through 4178 (the "Master Declaration") and this Residential Declaration is subject to the Master declaration, as amended, which governs all Shared Common Area between the Residential Units subject to the Residential Declaration and the Commercial Units subject to the Commercial Declaration.

NOW, THEREFORE, for the reasons recited above and subject to the Terms and Conditions set forth below, the Declarant hereby adopts the following:

ARTICLE 1 – DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **"Act"** shall mean the Condominium Ownership Act codified beginning at Section 57-8-1, Utah Code Annotated.
- 1.2 **"Allocated Interest"** shall mean the interest of that Owner (expressed as a percentage in Exhibit A to this Declaration) in the Common Expense liability and for the purposes of voting in the Association.
- 1.3 **"Articles"** shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 **"Assessments"** shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.5 **"Association"** shall refer to Apollo Square Residential Condominium Association, Inc., the membership of which shall include each Owner in the Residential Units. The Association is incorporated as a Nonprofit Corporation. If the Owners are organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.
- 1.6 **"Association Warranty"** shall have the meaning stated in Section 23.2.
- 1.7 **"Bylaws"** shall mean the Bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.8 **"Committee Member"** shall mean a duly qualified and elected or appointed member of the Management Committee.
- 1.9 **"Common Area"** shall, unless otherwise more specifically provided in this Declaration such as Residential Common Area, Commercial Common Area and Shared Common Area, mean everything and everywhere in the Project, except to the extent any fixture, structure, or other area is within the boundaries of or a part of a Unit, including, but not limited to: all real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple;
- (a) all foundations, columns, beams, supports, main walls, roofs;
 - (b) all parking areas, parking area access ramps and driveways, entry and other related structures;

- (c) all fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water;
 - (d) all stairways used by more than one Unit;
 - (e) all hallways or corridors used by more than one Unit;
 - (f) all entry areas and lobbies;
 - (g) all elevators;
 - (h) the exterior plaza;
 - (i) as applicable, all maintenance areas and areas for trash collection located in the parking area;
 - (j) as applicable, all apparatus and installations clearly intended and existing for common use; and
 - (k) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.10 **"Commercial Association"** shall mean Apollo Square Commercial Condominium Association, Inc.
- 1.11 **"Commercial Common Area"** shall mean the areas of responsibility of the Commercial Association. designated in the Commercial Declaration or as designated in the Plat as Commercial Common Area.
- 1.12 **"Commercial Declaration"** shall mean the declaration of Apollo Square Commercial Condominium Association, Inc.
- 1.13 **"Common Expenses"** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) utilities (other than utilities that are separately metered and charged to the Units), extermination, security, gardening and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by

- the Association as provided for or allowed in the Act or the Governing Documents; (h) any other expenses of the Association arising from the operation of the Association and not otherwise precluded by the Governing Documents or any applicable law.
- 1.14 **"Commercial Management Committee"** shall mean the Management Committee of the Commercial Association.
- 1.15 **"Commercial Space"** shall mean a Commercial Unit or other area which may be used, leased, or rented, or appurtenant to a Commercial Unit for the purpose of conducting commercial business. Commercial Space includes, but is not limited to areas for restaurants, clubs, gift shops, hair and beauty shops, fitness facilities, childcare facilities, real estate sales, and professional offices. Commercial Space may take the form of a condominium but does not include other Residential Units used, lease, or rented for overnight or longer residential accommodations.
- 1.16 **"Commercial Unit"** shall mean a Unit to be used as Commercial Space, rather than for residential purposes located on level one (1) of the Plat.
- 1.17 **"Community-Wide Standard"** shall mean (a) the standard of use, conduct, architecture, landscaping, aesthetic matters, maintenance, repair, replacement and upkeep generally prevailing in the Association, or (b) the minimum standards described in this Declaration, the Rules, resolutions, and all other Governing Documents. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Management Committee. The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Association matures.
- 1.18 **"Control Period"** shall have the meaning stated in Section 22.3.
- 1.19 **"Costs"** shall have the meaning stated in Section 18.1.
- 1.20 **"Covered Loss"** shall have the meaning stated in Section 11.3.
- 1.21 **"Customer"** shall have the mean an invitee or customer of Commercial Unit.
- 1.22 **"Customary Parking"** shall have the meaning stated in Section 10.6.
- 1.23 **"Declarant"** shall mean Apollo Square, LLC.

- 1.24 **"Declaration"** shall mean this Declaration, including all attached exhibits that are incorporated by reference, and any and all amendments to this Declaration.
- 1.25 **"Environmental Law"** shall have the meaning stated in Section 10.22.
- 1.26 **"Family Member"** shall have the meaning stated in Section 20.2.
- 1.27 **"Governing Documents"** shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, including any amendments made thereto, for any association within the Project and any other documents or agreements binding upon all of the Owners.
- 1.28 **"Hazardous Substances"** shall have the meaning stated in Section 10.22.
- 1.29 **"Insurable Property"** shall have the meaning stated in Section 11.3.
- 1.30 **"Insurance Trustee"** shall have the meaning stated in Section 11.11.
- 1.31 **"Lender"** shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.32 **"Limited Common Area"** shall mean the areas allocated by this Declaration for the exclusive use of one or more Residential Unit Owners to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.33 **"Manager"** shall mean any entity or person engaged by the Management Committee to manage the Project.
- 1.34 **"Management Committee"** shall mean the entity with primary authority to manage the affairs of this Association.
- 1.35 **"Master Association"** shall mean Apollo Square Condominium Association, Inc.
- 1.36 **"Master Declaration"** shall the declaration of Apollo Square Condominium Association, Inc.
- 1.37 **"Master Management Committee"** shall mean the Management Committee of the Master Association.
- 1.38 **"Material Alteration"** shall have the meaning stated in Section 4.4.
- 1.39 **"Non-Owner Occupied Unit"** shall have the meaning stated in Section 20.2.
- 1.40 **"Notice of Claim"** shall have the meaning stated in Section 23.4.

- 1.41 **"Occupant"** shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).
- 1.42 **"Owner"** shall mean the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the County Recorder of Salt Lake County, Utah. However, Owner shall not include a trustee for a deed of trust. As used in this Declaration, Owner that owns a Unit subject to the terms of this Declaration.
- 1.43 **"Owner Warranty"** shall have the meaning stated in Section 23.3.
- 1.44 **"Person"** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.45 **"Plat"** shall mean the record of survey map or maps of the Project recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments and supplements thereto.
- 1.46 **"Project"** shall mean the Property and all structures and improvements thereon including the Units, the Common Area, and the Limited Common Areas. The Project is named "Apollo Square" and is located entirely in Holladay, Salt Lake County, Utah.
- 1.47 **"Property"** shall mean the property legally described in Exhibit C and all easements and rights appurtenant thereto.
- 1.48 **"Rules"** shall mean and refer to the rules adopted by the Association.
- 1.49 **"Remodeling"** shall have the meaning stated in Section 4.3.
- 1.50 **"Residential Association"** shall mean Apollo Square Residential Condominium Association, Inc.

- 1.51 **"Residential Common Area"** shall mean the areas of responsibility of the Residential Association designated in the Residential Declaration, or as designated on the Plat.
- 1.53 **"Residential Declaration"** shall mean the declaration of Apollo Square Residential Condominium Association, Inc.
- 1.54 **"Residential Management Committee"** shall mean the Management Committee of the Residential Association.
- 1.55 **"Residential Units"** shall mean the Units that are not Commercial Units and are primarily used for residential purposes and located on levels two (2) and three (3) of the Plat.
- 1.56 **"Shared Common Area"** shall mean the areas of responsibility of the Master Association designated in the Master Declaration, or as designated on the Plat.
- 1.57 **"Signs"** shall have the meaning stated in Section 10.2.
- 1.58 **"Special Assessments"** shall have the meaning stated in Section 7.11.
- 1.59 **"Special Declarant Rights"** shall have the meaning stated in Section 22.1.
- 1.60 **"Temporary Parking"** shall have the meaning stated in Section 10.6.
- 1.61 **"Terms and Conditions"** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.62 **"Unit"** shall mean and refer to any one of the individual condos located in the Project for which the exterior boundaries at ground level are identified as a "Unit" on the Plat that are subject to this Declaration. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest appurtenant to such Unit.
- 1.63 **"Unit Damage"** shall have the meaning stated in Section 11.3.
- 1.64 **"Unit Damage Percentage"** shall have the meaning stated in Section 11.3.

ARTICLE 2 – THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Declarant hereby declares that the Property is part of the Project and declares that the residential portion of the Project and all of the

Residential Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions of this Declaration, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Residential Unit Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Residential Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents applicable to that Unit.

- 2.2 **Nature of the Project.** The Project is a condominium style community containing 38 Units in one building, the seven (7) Units on level one (1) are Commercial Units while the remaining Units on levels two (2) and three (3) are Residential Units. It includes driveways, parking areas, a rooftop terrace, and open space. The Project is not a cooperative.
- 2.3 **Project Name.** The Project shall be named, identified, and known as Apollo Square, unless otherwise changed as provided for in this Declaration.
- 2.4 **Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.5 **Registered Agent.** The Registered Agent of the Association shall be as provided for in entity filings of the Association.
- 2.6 **Expansion of Project.** The Project may be expanded by the Declarant.

ARTICLE 3 – DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, AND ALLOCATED INTERESTS

- 3.1 **The Unit.**
 - (a) Each Residential Unit is identified on the Plat by a distinct Lot number that identifies the Residential Unit. That number may or may not be consistent with the mailing address of the Residential Unit.
 - (b) Subject to further specification herein, each Residential Unit consists generally of all structures on or within the boundary of the Residential Unit, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, foundations, and fixtures and (2) in all walls shared with or abutting another Residential Unit, the Residential Unit shall extend to the center of the wall, which shall form the boundary of the Residential Units sharing that wall. Any structure that extends beyond the vertical plane of the ground level boundary of the Residential Unit is part of the Residential Unit

if it: (1) is attached to or part of a Residential Unit, and (2) was constructed as part of the original construction of the Residential Unit.

- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated boundaries of a Residential Unit shall be part of the Residential Unit.
- (d) All exterior and interior doors, door jams, windows, windowsills, window frames and all components therein, in or on the boundary of any Residential Unit are part of the Residential Unit. Sky lights, if any, and all installations related thereto are part of the Residential Unit.
- (e) All storage allocated to a specific Residential Unit, whether located under or within structures shall be part of the Unit to the same extent as described above for the interior of the Residential Unit.
- (f) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Residential Unit. The original construction shall be the first installation of foundations, framing, and wallboard. If the Management Committee determines (in its sole discretion) that the then current construction varies from the original as-built construction, then the Association may, at the expense of the Association or the Residential Unit Owner, in the Management Committee's discretion, require that the current construction be made to comply with the original construction. In exercising its discretion on this issue, the Management Committee shall consider: (1) whether the Residential Unit Owner caused the nonconforming construction; (2) whether the Residential Unit Owner sought or obtained Management Committee approval for any nonconforming construction; (3) whether other Residential Unit Owners engaged in similar nonconforming construction; (4) the overall culpability of the Residential Unit Owner as it relates to the nonconforming construction; and (5) the reason for the nonconforming construction.

3.2 Limited Common Area.

- (a) **Specific Identification of Limited Common Areas.** The Limited Common Area of each Residential Unit shall consist of the parking stalls assigned only to that Residential Unit, any associated patios and balconies, if any.
- (b) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Residential Unit where so identified and may not be severed from the ownership of the Residential Unit.

- 3.3 **Allocated Interest of Each Unit in the Votes of the Association.** The Owners of each Residential Unit shall be entitled to their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve. The Allocated Interests shall be as provided for on Exhibit A.
- 3.4 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein, are hereby incorporated into and made a part of this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

ARTICLE 4 – MAINTENANCE, REMODELING, AND UTILITIES

4.1 **Owner Responsibility for Maintenance of Units.**

- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following in a manner consistent with the Community-Wide Standard:
1. all interior and exterior doors, including thresholds and door jams;
 2. all paneling, tiles, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
 3. all drywall, wallboard, or similarly functioning materials within the Unit;
 4. all framing, insulation, and other materials associated with interior nonbearing walls;
 5. all windows, window sills, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass (the Association may elect to arrange and pay for the cleaning of exterior windows as a common expense or may require the Owners to pay a particular person or company to clean on a schedule determined by the Association);
 6. all sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within an Owner's Unit;
 7. all plywood decking and similar materials on interior floors;

8. any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting particular to a porch, patio or balcony but not including exterior lighting attached to a Unit for the purpose of lighting common area outside of those areas), fans, plumbing fixtures (other than pipes located outside of a Unit), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration; and
 9. the paint and any other decorative finish inside the opening to any skylight; and
- (b) The Owner shall be responsible for keeping the Unit and all porches and exterior balconies associated with an Owner's Unit in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Management Committee may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed on any porch or balcony, which may include a prohibition on leaving, installing, or storing any items in such places.

4.2 **Association Responsibility for Maintenance of Units.** The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the following:

- (a) all framing and structural components in ceilings and floors (not including concrete pads or plywood decking) that exclusively serve the Residential Units on levels two (2) and three (3);
- (b) all framing, structural components, and insulation in exterior and bearing walls that exclusively serve the Residential Units on levels two (2) and three (3);
- (c) except as otherwise provided herein, all framing, structural components, and insulation located exterior to any drywall or similar materials on the interior of the Residential Units on levels two (2) and three (3);
- (d) the framing, structural components, and insulation in any walls common to two Residential Units;
- (e) any patios, porches, and balconies on the exterior of any Unit and any railings associated therewith that exclusively serve the Residential Units on levels two (2) and three (3);

- (f) the corridors, hallways and lobby areas serving more than one Unit that exclusively serve the Residential Units on levels two (2) and three (3); and
- (g) the roof top terrace.

4.3 **Modifications to Units.**

- (a) Without the prior approval of the Association, an Owner shall not make any alterations, repairs, or modifications to any part of the exterior of a building including any area that the Owner is obligated to maintain such as windows, light fixtures, sky lights, and exterior doors. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials or aesthetic requirements or other standards.
- (b) Except as otherwise provided herein, an Owner may complete any maintenance or upgrades to the interior of a Unit not otherwise defined as Remodeling, without prior approval of the Association.
- (c) **Remodeling.**

1. For the purpose of this Declaration, "Remodeling" shall include, but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, ceramic tile or hardwood floors; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling.
2. Before beginning any Remodeling or deviating from a previously approved Remodeling plan, the Owner of a Residential Unit shall:
 - (i) notify the Association and provide the following: (1) a written description of the proposed Remodeling, (2) a description of how any debris or materials removed will be disposed of, (3) the date the Remodeling will begin, (4) the date the Remodeling is expected to be completed, (5) the names and contractor license numbers of all contractors and other persons expected or required to perform work in the Remodeling, (6) any expected nuisance that the Remodeling shall create such as noise or dust, and (7) the Owner's proposal for mitigating any expected nuisance; and

- (ii) wait to begin the Remodeling until the Association gives written approval. If the Association does not respond within fifteen (15) days of a notice of Remodeling, the Owner may complete the Remodeling consistent with the information provided in the notice. The Association may respond by approving the request, requesting additional information, or denying the request if the notice is not complete or if the Remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information or denies the request, the Owner shall not begin the Remodeling.
 - 3. Without prior written permission of the Residential Management Committee and regardless of whether any response from the Association is timely received or not related to a request for Remodeling approval, none of the following shall occur at any time: (1) any use of the Residential Common Area for staging, storage, assembly, or construction; (2) any nuisance as established by law or by the Governing Documents; (3) any blocking of the Residential Common Area by vehicles, materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to Remodeling.
 - 4. The Residential Management Committee shall have no authority to approve of any Remodeling inconsistent with the Terms and Conditions that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise provided herein), or that would cause unsafe conditions or a legal nuisance.
- (d) All Remodeling and other repairs and modifications to Residential Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.

4.4 Maintenance of and Modifications to Common Area.

- (a) **Maintenance of Residential Common Area.** Except as maintenance obligations are otherwise assigned to the Owners of Residential Units in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Residential Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Residential Common Area (subject to the obligation to get approvals for Material Alterations to the Project). The

Association shall do all such other and further acts that the Residential Management Committee deems necessary to preserve and protect the Residential Common Area, in accordance with the general purposes specified in this Declaration. The Residential Common Area includes all exterior patios attached to Residential Units and any concrete, terraces, railings, structures, decks, located in the Residential Common Area or as identified on the Plat. The Association retains the absolute right to remove and replace any structure, item, or condition in the Residential Common Area.

- (b) **Maintenance of Non-Residential Common Area.** Shared Common Area and Commercial Common Area shall be maintained based on the respective Master and Commercial Declarations that govern those Non-Residential Common Areas.
- (c) **Capital Improvements.** Capital improvements solely to levels two (2) and three (3) shall be governed by and subject to the following conditions, limitations, and restrictions:
 - 1. Any capital improvement to the Project located exclusively on levels two (2) and three (3) that do not materially alter the nature of the Project and do not impact any other level or Shared Common Area, may be authorized by the Management Committee but must be approved by the Master Management Committee and the members of the Master Association. A "Material Alteration" to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, tennis court, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
 - 2. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding at least thirty (30%) of the undivided ownership interest in the Common Areas and must be approved of by the Master Management Committee. Notwithstanding anything to the contrary, no Material Alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners and the written consent of Owners holding at least 50% of Allocated Interest in the Association.
 - 3. Notwithstanding the foregoing, the Association and its Management Committee may not unreasonably impede Declarants right to satisfy existing development financing for community improvements or Declarant's right to develop the Project or other properties in the vicinity of the Project.

- (d) **Standard of Maintenance.** The Management Committee shall determine, in its sole discretion, the appropriate maintenance standard for the Residential Common Area, and related Limited Common Area, and the portions of the Residential Units for which the Association has maintenance responsibility, so long as those areas are maintained in the best interests of the Owners.
 - (e) **Assessment of Maintenance Expenses to Specific Owner.** Subject to the provisions related to insurance responsibility and deductible allocation herein, if the need for maintenance or repair is caused by a Residential Owner or an Occupant, the Association shall assess to the Residential Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.
- 4.5 **Default in Maintenance.** If an Owner or Occupant of a Residential Unit fails to: (1) maintain a Residential Unit or related Limited Common Area as required in the Governing Documents, or (2) make repairs otherwise required of the Owner of the Residential Unit in such a manner as may be deemed reasonably necessary in the judgment of the Residential Management Committee to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Residential Units, then the Association may give written notice to such Owner or Occupant of the Residential Unit stating with particularity the nature of the default and the corrective action that the Residential Management Committee determines to be required and requesting that the same be carried out within a period of at least fourteen (14) days. If the Owner or Occupant of a Residential Unit fails to carry out such action within the period specified by the notice, then the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner of the Residential Unit for all costs associated therewith. The Management Committee may not assess such a notice to a Commercial Unit without approval of the Commercial Management Committee.
- 4.6 **Utilities.** All utilities for individual Residential Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Residential Unit and such utility charges shall be the responsibility of the Residential Unit Owner.

ARTICLE 5 – ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners of Residential Units.
- 5.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment of the Master Declaration.

- 5.3 **Legal Organization.** The Association, in the discretion of the Management Committee, shall be entitled to organize as a non-profit corporation or other legal entity that may be selected by the Management Committee. The Management Committee may select the name for this entity which shall, to the extent reasonably possible, be consistent with the name as identified in this Declaration. In the Management Committee's sole discretion, the Bylaws of the Association, may be adopted, in part or in whole, as the Bylaws of any corporation or legal organization of the Association, or the Association may adopt additional Bylaws or other necessary documents related to the legal organization of the Association which must be consistent with the then existing Declaration and Bylaws, unless they are amended pursuant to their terms. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents pertaining to the entity shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners of a Residential Unit. Each Owner of a Residential Unit shall be a member of the Association so long as such Owner has an ownership interest in a Residential Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Residential Unit. Upon the transfer of an ownership interest in a Residential Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Residential Unit is held by more than one Person, the membership appurtenant to that Residential 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 Residential Unit is held.
- 5.5 **Availability of Documents.** The Association shall make available to the Owners of Residential Units, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term "available" as used in this Section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Management Committee determines, in good faith, would reveal sensitive personal or financial information of another Owner of Residential Unit or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner of a Residential Unit comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

5.6 **Management Committee.** The governing body of the Association shall be the Management Committee elected pursuant to the Bylaws. The Management Committee shall consist of three (3) members. Except as otherwise provided in this Declaration, or the Bylaws, the Management Committee shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. Except as may be specifically provided in the Declaration, Bylaws, or by applicable law, no Owner or group of Owners, other than the Management Committee, may direct the actions of the Association.

5.7 **Committee Members.**

(a) **Qualification.**

1. To be on the Management Committee, a person must be an Owner and over the age of eighteen (18) years old. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee.
2. As further detailed and explained in the Bylaws, at least two (2) members of the Management Committee must at all times have as their primary residence, a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Committee Members.

(b) **Reasonable Ongoing Requirements for Committee Members.** The Bylaws may place reasonable obligations and requirements on existing Committee Members to retain their membership on the Management Committee, such as a requirement that a Committee Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Committee Member who fails to comply with the reasonable requirements, which may include some action of the remaining Committee Members. Any Bylaw requirements adopted pursuant to this Section shall not apply to any Committee Members on the Management Committee during the two-year term of the Committee Member being served when they are adopted.

5.8 **Limitation on Authority of Owners, Committee Members, Officers, and the Management Committee.**

(a) Except as provided herein or in the Bylaws, the Management Committee, any individual Owner, and any individual Committee Member or officer shall have no authority to and may not act on behalf of the Association or the Management Committee to:

1. amend or terminate any Governing Document;
2. elect or remove members of the Management Committee;
3. establish or change the qualifications, powers and duties, requirements, or terms of Committee Members or of the Management Committee; or
4. authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

5.9 **No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents.** No one may rely upon any authorization (from the Management Committee or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes, related to the Project or the Association, is in compliance with the terms of the Governing Documents.

ARTICLE 6 – GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

6.1 **Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided for by law:

- (a) **Maintenance.** The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association.
- (b) **Paying Expenses.** The Association shall provide for the payment of Association expenses.
- (c) **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the residential portion of Project consistent with the requirements of the Governing Documents.

- (d) **Entering Units.** After having given the appropriate notice as required in Article 17, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Residential Unit to abate any infractions, to make repairs or correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant of a Residential Unit.
- (e) **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the residential portion of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues related to the Residential Common Area and Residential Units including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. Rules must be reasonable in light of all the circumstances pertaining to the situation or issue addressed by the Rules. No Rule intended to apply exclusively to the Commercial Units, or that may have a material adverse effect on the Commercial Units may be approved or enforced by the Residential Association without the affirmative consent of the Commercial Management Committee.
- (f) **Hiring Managers and Delegating Responsibilities.** The Association shall hire a Manager to assist the Management Committee in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, fines to Owners, and general and Special Assessments. Any powers and duties delegated to any Manager or other person may be revoked by the Management Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.
- (g) **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

- (h) **Enforcement Rights.** In addition to any other remedies allowed or provided for in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate a Residential Unit Owners' rights to receive utility services paid as a common expense; (3) suspend a Residential Unit Owner's right to vote and/or suspend services the Association provides; (4) require a Residential Unit Owner, at the Owner's sole expense, to comply with the Community-Wide Standard; (5) take action to abate any violation at the Residential Unit Owner's sole cost and expense, and the Association shall have the right to enter onto an a Residential Unit Owner's parcel to bring such parcel into compliance with the Community-Wide Standard should a Residential Unit Owner fail to comply with subsection (4) above after reasonable notification; (6) collect rents directly from tenants if Residential Unit Owners fail to pay Assessments; record a notice of violation with respect to any Residential Unit on which a violation exists; and (8) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

All rights and remedies of the Association shall be cumulative and the exercise of one remedy shall not preclude the exercise of any other right or remedy.

(i) **Discretion in Enforcement.**

1. Subject to the discretion afforded in this Section, the Management Committee shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing documents.
2. The Management Committee shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
 - (i) whether to compromise a claim made by or against the Management Committee or the Association; and
 - (ii) whether to pursue a claim for an unpaid Assessment.
3. The Association may not be required to take enforcement action if the Management Committee determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:
 - (i) the Association's legal position does not justify taking any or further enforcement action;

- (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law;
 - (iii) (A) a technical violation has or may have occurred; and (B) the violation is not material as to a reasonable person or does not justify expending the Association's resources; or
 - (iv) it is not in the Association's best interest to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- 4. Subject to Subsection (5), if the Management Committee decides under Subsection (2) to forego enforcement, the Association is not prevented from pursuing later enforcement action.
- 5. The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- (j) **Reserve Fund.** The Association shall maintain a reserve fund and obtain and update a reserve analysis as required in this Declaration.
- (k) **Preventing Conflicts with Service Providers and Vendors.** While past experience and relationships between service providers, vendors, Managers, Owners, or Committee Members can result in good referrals, the Association shall not permit any paid services or materials obtained by the Association from being performed or provided by: (1) any relative of any Committee Member, Manager, or of any officer, employee, or owner of the Manager, or (2) any business or entity in which any Committee Member, Manager, or employee, officer, or owner of any Manager or any relative of the same has more than a 1% ownership or beneficial interest. A relative is any person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and persons providing services to the Association.
- (l) **Establishing Hearing Procedures.** The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Residential Unit Owner or group of Residential Unit Owners. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as

needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum, for: (1) at least two weeks' notice of the hearing to the Residential Unit Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Residential Unit Owner deems relevant to the disputed issue.

- (m) **Annual Meeting.** The Association shall arrange for and conduct an annual meeting at least once a year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (n) **Payoff Information Fees.** The Association is specifically authorized to establish a fee of \$50.00 to provide payoff information related to the transfer, refinance, or closing of a Unit. The Management Committee may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.
- (o) **Reinvestment Covenant upon Sale or Transfer of Unit.** The Management Committee, in collaboration with the Master and Commercial Associations, may require the seller or buyer to pay a Reinvestment Fee as provided for in Utah Code Ann. § 57-1-46, in a total amount of .3% (or a lesser amount established by the Management Committee in the Rules) of the value of a Residential Unit. Unless otherwise established by an appraisal of the Residential Unit within 180 days prior to the transfer, the value shall be as reported by the tax assessor at the time of the transfer. All or a portion of the Reinvestment Fee shall be used to pay the Association's costs directly related to the transfer of the Unit, not to exceed \$250. The Reinvestment Fee may not be enforced against: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; (e) the transfer of burdened property by a financial institution, except to the extent that the Reinvestment Fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250 (f) the transfer by an owner into a revocable inter vivos trust in which the owner is a beneficiary, or (g) a transfer which, in the reasonable judgment of the Association, should constitute an "exception" situation consistent with the intention of this Declaration. The Association shall have authority to record any notice required by law to effectuate this provision.

ARTICLE 7 – BUDGETS & ASSESSMENTS

- 7.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the residential portion of the Project; enhancing the quality of life of the Residential Unit Owners in the Project; enhancing and preserving the value of the residential portion of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 **Budget and Regular Assessment.**
- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Management Committee may revise that budget from time-to time as it deems appropriate.
 - (b) The budget shall cover the period of the next fiscal year. The Budget shall estimate the total Common Expenses for this Association to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Management Committee deems appropriate.
 - (c) The Management Committee shall send a written copy of the budget to all Residential Unit Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
 - (d) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Residential Unit by dividing the total budgeted amount by the Allocated Interest for each Residential Unit.
- 7.3 **Payment of Regular Assessments.** Unless otherwise established by the Management Committee and communicated to each Residential Unit Owner, each Residential Unit Owner shall pay to the Association the Residential Unit Owner's regular Assessment in equal monthly installments.
- 7.4 **Adjustments to Regular Assessments.** In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Residential Unit Owner's share of the new budget total based on the Residential Unit Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management

Committee, each Residential Unit Owner shall thereafter pay to the Association the Residential Unit Owner's adjusted regular Assessment in equal monthly installments.

- 7.5 **Personal Obligation for Assessment.** Each Owner of any Residential Unit, by acceptance of a deed or other instrument creating in such Residential Unit Owner the interest required to be a Residential Unit Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Residential Unit Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Residential Unit Owner became an Owner of a Residential Unit. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Residential Unit at the time the Assessment becomes due.
- 7.6 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner as determined by the Management Committee.
- 7.7 **Percentage Assessments.** Except as otherwise provided herein, all Assessments (other than Special Assessments to Individual Units) shall be allocated to all Residential Unit Owners based on the size of each Residential Unit.
- 7.8 **Rules Regarding Billing and Collection Procedures.** The Management Committee shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to a Residential Unit Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Residential Unit Owner of liability for any Assessment or charge under the Governing Documents.
- 7.9 **Certificate of Payment.** The Association shall, within ten (10) business days after written demand, furnish to any Residential Unit Owner liable for Assessments or such other person for whom a Residential Unit Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of fifty dollars (\$50.00) or such other amount allowed by law, and provided for in the Rules, may be collected by the Management Committee for the issuance of each such certificate. Each

certificate is conclusive in favor of a person who relies on the written statement in good faith.

- 7.10 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect Special Assessments on Residential Units payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses.
- 7.11 **Special Assessments to Individual Units.** "Special Assessments" may be levied by the Association against a particular Residential Unit and its Owner for:
- (a) Costs incurred in bringing a Residential Unit Owner or the Owner's Residential Unit into compliance with the provisions of the Governing Documents;
 - (b) Any other charge designated as pertaining to an individual Residential Unit in the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest;
 - (d) Attorneys' fees, costs and other expenses relating to any of the above; and
 - (e) Any other expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget.
- 7.12 **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 residential portion of the Project, which benefit individual Residential Units, and which can be accepted or not by individual Owners of Residential Units, such Owners, in accepting such materials or services, agree that the costs thereof may be a Special Assessment pertaining to that Residential Unit, at the discretion of the Management Committee.
- 7.13 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee in its discretion may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Residential Unit Owners in proportion to the Allocated Interests of each Residential Unit in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. 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.

- 7.14 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.15 **How Payments Are Applied.** Unless otherwise provided for in the Rules of the Association, payments on Assessments shall be applied in the following order: (1) attorney fees, oldest charges to newest; (2) fines, oldest charges to newest; (3) late charges and late fees, oldest charges to newest; (4) interest, oldest charges to newest; (5) any other assessments other than special or regular monthly assessments, oldest charges to newest; (6) Special Assessments, oldest charges to newest; and (7) regular assessments, oldest charges to newest.

ARTICLE 8 – NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 8.1 **Delinquency.** Assessment not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 **Collection Charges and Interest.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules of the Association, the following shall apply. Monthly assessments shall be due and payable on the first day of the month and late if not received by the tenth (10th) day of that month. Late fees shall be \$35.00 for each month that an Residential Unit Owner's account has an unpaid balance after the due date. In addition to late fees, interest shall accrue on all unpaid balances-including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and assessments at two percent (2%) per month. The Association may also impose and assess to the Residential Unit Owner a collection charge, late fee, and any other reasonable charge imposed by a Manager related to collections, as the Management Committee may establish in the Rules of the Association.
- 8.3 **Joint and Several Liability of Owner and future Owners for All Past and Presently Accruing Unpaid Assessments.** The Residential Unit Owner and any future Owners of a Residential Unit are jointly and severally liable for all Assessments accruing related to that Residential Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any assessments accruing after an Owner has lawfully transferred the Residential Unit to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the

Unit shall not be considered a legal conveyance of title for purposes of this Section 8.3. This obligation is separate and distinct from any lien rights associated with the Unit.

- 8.4 **Lien.** The Association has a lien on each Residential Unit for all Assessments (which include, but are not limited to, interest, collection charges, late fees, fines, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure)). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Residential Unit except only: (1) a lien or encumbrance recorded before this Declaration was recorded, (2) a first or second security interest on the Residential Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Residential Unit. The Association may, but need not, record a notice of lien on a Residential Unit.
- 8.5 **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. 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 and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Annotated §§ 57-1-20 and 57-8-45, an Owner's acceptance of an interest in a Residential Unit constitutes a simultaneous conveyance of the Residential Unit in trust, with power of sale, to Robert T. Spjute, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 **Homestead Waiver.** Each Owner of a Residential Unit, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any

homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

- 8.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Residential Unit Owner's: (1) rights to receive a utility service for which the Residential Unit Owner pays as a common expense, and (2) access to recreational facilities.
- 8.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Residential Unit for which an assessment is more than sixty (60) days late. Each occupant, by moving into the Residential portion of the Project, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.
- 8.10 **Attorneys' Fees Incurred as a Result of Default.** In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of a Residential Unit Owner's failure to timely pay Assessments including, but not limited to, attorneys' fees incurred to: (1) obtain advice about a default; (2) collect unpaid payments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) examine the debtor or others through a formal or informal deposition, at a meeting conducted under 11 U.S.C. §341, an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure; (5) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (6) monitor any bankruptcy proceedings including, but not limited to, reviewing a Residential Unit Owner's bankruptcy statements and schedules filed with the court, reviewing other pleadings and claims filed in a Residential Unit Owner's bankruptcy case, regular monitoring of an Owner's progress of complying with a confirmed chapter 13 or chapter 11 plan for the duration of the plan, and processing payments from a Bankruptcy Trustee or Debtor-in-Possession; (7) litigate, seek and respond to discovery, introduce evidence, hire and pay expert witnesses, file motions and other pleadings, attend trials, hearings, or other court proceedings, as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the Residential Unit Owner's bankruptcy estate or co-debtors, to challenge exemptions, to challenge treatment under a proposed plan, to pursue any appropriate adversary proceeding for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) all fees and costs incurred in any foreclosure of a lien, securing lien rights, or providing for any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

- 8.11 **Association Gains Title to Unit through Foreclosure.** If the Association takes title to a Residential Unit pursuant to a foreclosure, Judicial or non-judicial, it shall not be bound by any of the provisions related to the Residential Unit that are otherwise applicable to any other Owner including, but not limited to, obligations to pay Assessments, taxes, insurance, or to maintain the Unit. By taking a security interest in any Unit governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Residential Unit if the Association takes title to a Residential Unit related to any failure to pay Assessments.

ARTICLE 9 – PROPERTY RIGHTS IN UNITS AND COMMON AREA

9.1 **General Easements to Common Area and Units.**

- (a) Subject to all other terms of the Governing Documents, each Residential Unit Owner shall have an equal undivided interest, right, and easement of use and enjoyment in and to the Residential Common Area, except as it relates to the porches, parking spaces, or other areas that exclusively serve one Unit, which shall be Limited Common Area for the exclusive use of the Occupants of the Unit to which they are appurtenant. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Unit over and across such Residential 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. Authorized Occupants shall have the same access and use rights to the Residential Common Area as an Owner. All rights given to Owners and Authorized Occupants under this Section 9.1(a) shall be subject to any Rules established by the Management Committee, including, but not limited to, Rules limiting Residential Common Area use.
- (b) The Association shall have nonexclusive easements with the right of access to each Residential Unit, including any balconies, to make inspections, to prevent or mitigate damage to Residential Units and to Residential Common Area, and to maintain, repair, replace or effectuate the restoration of the Residential Common Area and those portions of the Unit that the Association is responsible for maintaining which are accessible from such Residential Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Residential Common Area for purposes necessary for the proper operation of the residential portion of the Project.

- 9.2 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration,

replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the structure.

- 9.3 **Limitation on Easement - Suspension of Owner's Rights.** A Residential Unit Owner's equal undivided interest, right and easement of use and enjoyment concerning the Residential Common Area shall be subject to the following:
- (a) The right of the Association to suspend the Residential Unit Owner's right to the use of any recreational facilities included in the Residential Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Residential Unit Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive sixty (60)-day periods, if any, such infraction is not corrected during any prior sixty (60)-day suspension period;
 - (b) The right of the Association to impose reasonable limitations on the number of Occupants per Residential Unit Owner who at any given time are permitted to use the Residential Common Area; and
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Residential Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 9.4 **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.
- 9.5 **Inappropriate Uses of Internet Services Prohibited.** To the extent that internet service is provided to the Unit by the same internet service provider or through the use of any shared or joint internet service equipment, each Owner agrees that it is responsible for its, or its guests or invitees, use of such internet. Each Owner agrees not to use, or allow to be used, the internet service in such Owner's Unit for any illicit or illegal purpose, including any use that may result in civil or criminal liability. Each Owner shall indemnify and hold harmless the Association, the Declarant, and all other Unit Owners (collectively the "*Indemnified Parties*") from any and all claims, damages, harm or liability of any kind, including attorney fees and costs, incurred or threatened against any of the Indemnified Parties caused by such Owner's use of the internet provided to such Owner's Unit.

ARTICLE 10 – USE LIMITATIONS AND CONDITIONS

- 10.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions, and to ensure that the Residential portion of the Project is maintained and used in a manner consistent with the interest of the Residential Unit Owners. Pursuant to Utah Code Ann. § 57-8-8.1(8), the requirements of Utah Code Ann. § 57-8-8.1(1) through (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 10.2 **Signs.** The Association may regulate and restrict signs in the Residential portion of the Project, to the extent permitted by law, in the Rules, but may not regulate the use of signs by the Commercial Units. “Signs” shall include any type of object (including, but not limited to, flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit.
- 10.3 **Nuisance.** No noxious or offensive activity shall be carried on upon the residential portion of the Project, nor shall any activity that might be or become an annoyance or nuisance to the Residential 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 Residential Units. No Owner or Occupant of a Residential Unit shall engage in activity within the residential portion of the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. The determination as to whether a noxious or offensive activity has taken place in a Commercial Unit requires the assent of the Commercial Association. Owners of Residential Units are on notice that the Project is a mixed-use condominium project consisting of both Residential and Commercial Units and noise, light, gatherings of people and activity related to commercial activities conducted during regular business hours is not considered a nuisance.
- 10.4 **Smoking.** It shall be a nuisance and prohibited under Section 10.3 to permit or cause any smoke to drift to, or otherwise enter into another Unit, the balcony of another Unit, or the Limited Common Area of another Unit. Neither an Owner complaining of smoke or the Association responding to that Complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project or to any Residential Unit to prevent drifting smoke from entering into that Unit or any patio or balcony associated with that Residential Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or the patio, porch, or balcony of another Unit, which may require, if other attempts to stop it are unsuccessful, the termination of smoking.

- 10.5 **External Fixtures.** To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Management Committee.
- 10.6 **Window Covers.** The Management Committee may adopt Rules regulating the type, color, and design of window covers and requiring prior approval before installation on Residential Units. Absent Rules permitting otherwise, only white roller shades, shutters and blinds may be installed as window covers in Residential Units. No window shall be covered by paint, foil, sheets, or similar items.
- 10.7 **External Laundering.** Unless otherwise permitted by the Management Committee in the Rules, external laundering and drying of clothing and other items is prohibited.
- 10.8 **Outside Speakers and Amplifiers.** Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Residential Unit shall be permitted.
- 10.9 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except as may be permitted by the Management Committee in the Rules.
- 10.10 **Unightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Management Committee.
- 10.11 **Animals.** Animals generally kept in households such as dogs, cats, birds, hamsters, and ferrets may be kept in the Project subject to the rules and requirements of the Governing Documents. No more than three of any type of animal may be kept in any one Residential Unit. No livestock, poultry, or reptiles, may be kept in any Residential Unit. All animals are subject to the Rules adopted by the Management Committee. Notwithstanding the foregoing, no animal may be kept within a Residential Unit which: (1) is raised, bred, kept, or maintained for any commercial purposes, except where specifically allowed in a

Commercial Unit; (2) causes a nuisance; or (3) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All animal fecal matter shall be immediately cleaned up within the Project by the Owner of such animal. The Management Committee may adopt Rules adding further Terms and Conditions related to animals in the Commercial Units not inconsistent with this Declaration, including, but not limited to, requirements for registration, specific fees or deposits to Owners of Residential Units that have animals, the use of leashes, noise and barking limitations, and limitations on the overall number of animals. In an effort to minimize anxiety and fear of the Owners generally, the Residential Association may ban dogs of certain breeds (pure or partial) believed generally to be aggressive including, but not limited, to the following breeds, Pit Bull, Presa Canario, Chow Chow, Doberman Pinscher, Alaskan Malamute, and Rottweiler. No Owner shall possess or maintain an aquarium in any Residential Unit without written permission from the Master Management Committee.

10.12 **Waterbeds.** No Owner shall possess, maintain, or use a waterbed in any Residential Unit without written permission from the Master Management Committee.

10.13 **Floor Load.** There shall be no floor load in excess of the weight for which the Residential Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Residential Unit Owner and approved in writing by the Management Committee.

10.14 **Residential Occupancy.**

(a) No trade or business may be conducted in or from any Residential Unit, unless:

1. the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
2. the business activity conforms to all zoning and legal requirements for the Project and the business activity;
3. the business activity does not involve Persons coming onto the Project who do not reside in the Project or door-to-door solicitation of Occupants of the Project;
4. the business activity is consistent with the residential character of the residential portion of the Project and does not constitute a nuisance, or a hazardous or

offensive use, or threaten the security or safety of other Occupants of the Project;

5. the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, a description of any impact on the Project;
6. the business activity will not result in the increase of any insurance of the Association;
7. the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
8. the Management Committee's requests for information related to the business are responded to fully and completely.

(b) No Units may be used as a time-share property.

(c) Except as provided in Article 20 and Section 10.14(a), no Residential Unit may be used for any purpose other than a residential purpose.

(d) This Section 10.14 does not apply to Commercial Units.

10.15 No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.

No Residential Unit shall be split, subdivided, separated, or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Residential Unit shall sell or lease part of a Residential Unit. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Residential Unit or the Residential portion of the Project shall be recorded on the Residential portion of the Project unless the Master Management Committee and/or Owners (as required in the Governing Documents) have first approved, in writing, the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.15 shall be null, void, and of no legal effect.

10.16 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done on any Residential Unit without the prior written approval of the Master Management Committee or any Committee established by the Master Management Committee for that purpose. By way of illustration, but not of limitation, the following are

considered exterior changes: painting, landscaping, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, fences, and other work that in any way alters the exterior appearance of the Property. The Master Management Committee, or committee established by the Master Management Committee for that purpose, may designate the design, style, model, and manufacturer of any exterior improvement or alteration that is acceptable to the Management Committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

10.17 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights on a Residential Unit shall be allowed only to the extent approved by the Master Management Committee.

10.18 **Variances.** The Management Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Management Committee determines in its discretion (by unanimous vote): (a) either (i) that the Term and Condition 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 Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable, and without any effect whatsoever, unless reduced to writing and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears after reasonable investigation under the circumstances that the Owner is incapable of paying the Assessment, and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure. Any variance considered during the Control Period requires the written approval of the Declarant.

10.19 **Hazardous Substances.**

(a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project.

- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.19 shall survive any subsequent sale by an indemnifying Owner.
- (c) As used in this Section 10.19, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.19, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

ARTICLE 11 – INSURANCE

- 11.1 **Insurance Requirement.** The Association, in collaboration with the Master and Residential Associations, shall obtain insurance as required in this Declaration and as required by applicable law. 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.
- 11.2 **Annual Insurance Report.** Not later than sixty (60) days prior to the annual meeting of the Association, the Management Committee shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the condominium association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that

coverage, and if no earthquake insurance is obtained, a conspicuous and clear statement in both bold and uppercase letters stating: "NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;" and (4) a description of any flood insurance and material exclusions and limitations for that coverage, and if no flood insurance is obtained, a conspicuous and clear statement in both bold and uppercase letters stating: "NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION." The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. The most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

11.3 **Property Insurance.**

(a) **Hazard Insurance.**

1. **Blanket Policy of Property Insurance.** The Master Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, except the Commercial Units may be excluded as provided in Utah Code Ann. 9(b)(ii), fixtures, and building service equipment.

(b) **Flood Insurance.**

1. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, as defined by Federal law, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the 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 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 Project located within a designated flood hazard area; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property.
2. If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Management Committee, purchase flood

insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

- (c) **Earthquake Insurance.** The Association may purchase earthquake insurance as the Management Committee deems appropriate. If the Management Committee elects not to purchase earthquake insurance, a vote of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Management Committee shall purchase earthquake insurance within sixty (60) days of the vote.
- (d) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account 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.
- (e) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Management Committee determines that a claim is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible, and a claim is submitted to the Association's property insurance carrier: (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to the Common Area; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in Subsection 11.3(b)(2), recover any payments the Association makes to remediate the Unit; and (iv) the Association need not tender the claim to the Association's insurer.
- (f) **Notice Requirement for Deductible.** The Association shall provide notice to each Residential Unit Owner of the Owner's obligation under Subsection 11.3(b) 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 the event 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.

- 11.4 **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 would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. If the Association owns Common Area that it has no obligation to maintain, it shall require the Person or entity with the primary maintenance responsibility to indemnify and defend the Association against any claims related to that Common Area.
- 11.5 **Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, 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 Governing Documents, and breach of contract (if available). This policy shall include coverage for: (1) volunteers and employees, (2) monetary and non-monetary claims, (3) 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) defamation. In the discretion of the Management Committee, 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.
- 11.6 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall provide coverage for: (1) an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) theft or embezzlement of funds by: (a) Officers and Management Committee 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.
- 11.7 **Workers' Compensation Insurance.** The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Management Committee deems appropriate.
- 11.8 **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 Lender.
- 11.9 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Residential Unit Owner shall also be an insured under all property and CGL insurance policies.

- 11.10 **Association's Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy: (a) 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 one 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. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 11.11 **Insurance Trustee.** At the discretion of the Management Committee, or upon written request executed by Owners holding 50% of the Allocated Interests, the Management Committee 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 paragraph as the Owners or Management Committee (as the case may be) shall require related to a loss receipt, or potential receipt, of insurance proceeds.
- 11.12 **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 by which recovery is voided under a policy.
- 11.13 **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, the Owners, any Person residing with an Owner, if an Owner resides in the Unit, and the Association's respective agents and employees.
- 11.14 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in 2011 Senate Bill 167 (the final version as enacted by the legislature) 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 law applicable to condominium associations shall apply to this Association.

ARTICLE 12 – DESTRUCTION OF IMPROVEMENTS

12.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Project, the Management Committee of each association within the Project shall collaborate with the other associations and shall promptly take the following actions:

(a) The Management Committee of each Association within the Project shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.

(b) The Management Committee, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any.

(c) **Damage to a portion of Project-Insurance Proceeds.**

1. If a portion of the Project for which insurance is required under this part is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (i) the Project is terminated; (ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (iii) (A) Owners holding at least 75% of the Allocated Interests in the Association vote not to rebuild; and (B) each Owner of a Unit that will not be rebuilt votes not to rebuild.

2. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

3. If the entire Project is damaged or destroyed and not repaired or replaced: (a) the Association shall use the insurance proceeds attributable to the damaged Common Areas to restore the damaged area to a condition compatible with the remainder of the Project; (b) the Association shall distribute the insurance proceeds attributable to Units and Common Areas that are not rebuilt to: (i) the Owners of Units that are not rebuilt; (ii) lien holders; and (iii) the Association shall distribute the remainder of the proceeds to all the Owners or lien holders in proportion to their Allocated Interests.

4. If the Owners vote not to rebuild a Unit: (a) the Unit's Allocated Interests are automatically reallocated upon the Owner's vote as if the Unit had been

condemned and (b) the Association shall prepare, execute, and submit for recording an amendment to the Declaration reflecting the new reallocations.

- (d) If the Management Committee, in good faith, determines that none of the bids submitted under this Section 12.1 reasonably reflect the anticipated reconstruction costs, the Management Committee shall continue to attempt to obtain additional bids that it determines reasonably reflect such costs. Such determination shall be made by the Management Committee as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Management Committee shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 12.2.
- (e) If the Management Committee determines that any Unit is uninhabitable by reason of its total or partial destruction, the Management Committee may abate Assessments against the Owner thereof until the Management Committee determines that habitability has been restored.
- (f) The Management Committee shall engage the services of a reputable licensed architect to advise and consult with the Management Committee on all actions and decisions under this Section 12.

12.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 12.1, as soon as practicable after the same has been determined, the Management Committee shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Management Committee shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

12.3 **Procedure for Minor Reconstruction.** If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Project, then the Management Committee shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Management Committee determines that adherence to such original plans and specifications is impracticable or is not in conformance

with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

- 12.4 **Procedure for Major Reconstruction.** If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Project, all insurance proceeds, together with such amounts from available reserves or Special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Management Committee, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Management Committee. Disbursement of such funds shall be made only upon the signatures of two members of the Management Committee and upon the terms and conditions provided in this Section 12.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Management Committee shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Management Committee determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors in a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Management Committee shall furnish to the Management Committee, before the commencement of construction, a full performance and lien payment bond written by a reputable corporate surety company. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Management Committee. The Management Committee may employ a licensed architect to supervise the repair and rebuilding to ensure that all work, services and supplies are in conformity with the requirements of the construction contract.

- 12.5 **Determination Not to Reconstruct Without Termination.** If Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt after a casualty) and eligible Lenders on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 12.6 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 12.7 **Repair of Units.** Installation of improvements and repair of any damage to the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 12.8 **Priority.** Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 13 – EMINENT DOMAIN

- 13.1 **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 that accomplishes the adjustment required for this Section. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

- 13.2 **Partial Taking of a Unit.** Except as provided in Section 13.1, 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.
- 13.3 **Taking of Limited Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of nor includes any Unit or Limited Common Area, the Master Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 13.5 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article 13 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. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14 – TERMINATION

- 14.1 **Required Vote.** Except as otherwise provided in Article 12 and Article 13, the Project may be terminated only by the approval of Owners holding at least ninety percent (90%) of the Allocated Interests. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs or for other reasons must be agreed to by Lenders that represent at least fifty-one percent (51%) of the votes of the Units that are subject to mortgages.
- 14.2 **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. 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 County Recorder in Salt Lake County, Utah and is effective only on recordation.
- 14.3 **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the 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. 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.
- 14.5 **Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any 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. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Management Committee. If any Owner disputes the appraised amount, they shall notify the Management Committee of the dispute within ten (10) days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly with the Association's appraiser select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.

- 14.6 **Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. 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.

ARTICLE 15 – AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing to which Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest have approved and consented, as evidenced by their signatures on or attached to the recorded amendment instrument. The signature of any one Owner of a Residential Unit is sufficient if there are multiple Owners of the Residential Unit, so long as any other Owner of the Unit does not vote inconsistent. In the event that an amendment is materially adverse to a Lender's interest in a Unit, such amendment must be approved by fifty-one percent (51%) of the Lenders for the Allocated Interests of Units subject to a mortgage. Notice of an amendment to the Declaration must be sent to a Lender via certified or registered mail with return receipt requested, and approval of and consent to an amendment by a Lender is assumed when a Lender fails to submit a response to any written proposal for an amendment within sixty (60) days after delivery by certified or registered mail with return receipt requested. No meeting or voting shall be required for an amendment, if the required consent is obtained.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights and obligations, remove existing rights and obligations, or modify existing rights and obligations. The right to amend shall be broadly construed to permit any change to the rights, obligations, and terms in the Declaration.

- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Management Committee, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Salt Lake County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** Changes or amendment to the Plat shall be governed by the Master Declaration.
- 15.5 **Amendment to Conform to Law.** The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in the area of condominium association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section.
 - (b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded.
 - (c) The Management Committee must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this Section of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (a) notifies the Owner that it intends to amend the Declaration pursuant to this Section, (b) provides the Owner a right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

- (d) Within forty-five (45) days of providing the information to the Owners required by this Section, no more than forty percent (40%) of the owners have objected to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section, the Management Committee members shall each sign the amendment instrument verifying that this Section has been complied with to the best of their knowledge and that no more than forty percent (40%) of the owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Salt Lake County.

ARTICLE 16 – INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws of, and then the Rules of each respective association within the Project. To the extent there is a conflict between the various Governing Documents within the Projects, the Master Declaration shall govern.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Association intends that the Project shall be governed by the Act, except where (in compliance with the Act) 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 Project to the extent allowed by the Act. 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, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners 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; simultaneously, consecutively, or alternatively.

- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the 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 article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other person subject to their terms.
- 16.7 **Applicable Law.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, except in the event where each association within the Project has varying rights and obligations as between the Shared Common Areas, Residential and Commercial portions of the Project, and the Association and the Owners 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; simultaneously, consecutively, or alternatively.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **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 Term and Condition is determined to be unenforceable, in whole or in part, for any reason.

ARTICLE 17 – NOTICE

- 17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:

(a) **Notice from the Association to an Owner.**

1. Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
 - (ii) by a written notice placed in 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. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
 - (iii) by written e-mail correspondence to an Owner: (1) that is sent to an e-mail address provided by the Owner for the purpose of Association communications, or (2) that is emailed to an e-mail address from which the Owner has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered. Any notice sent by e-mail shall be deemed delivered seventy-two (72) hours after it is sent;
 - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
 - (v) by any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
2. Notwithstanding Subsection (1) of this Section 17.1, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.
3. In the case of co-owners, notice to one of the co-owners is effective as notice to all such co-owners. The Association shall not be required to give more than one notice per Unit, whether electronic or not. In case any two co-owners send

conflicting notice demands, Notice shall be proper if mailed by first class mail to the Unit.

4. If posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association after the event as occurred for which posting was made or ten (10) days after the posting.

(b) Special Notice Prior to Association Entry into a Unit.

1. In case of an emergency or condition requiring immediate entry in a Unit, before entering a Unit the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit, (2) if no one answers the knocking, loudly identify who is knocking and state that the person identified is going to enter the unit on behalf of the Association, then wait one minute, and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
2. If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior paragraph, before entering a Unit the Association shall: (1) give notice to the Owner that an entry is required at least two weeks in advance with such notice stating: (a) that the Association or its authorized persons will enter the Unit; (b) the date and time of the entry; (c) the purpose of entering the Unit; (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit; (e) the full names of any person who will be entering into the Unit, and the phone numbers and addresses of the persons entering the Unit or of the company for whom the persons entering the Unit are employed for the purpose of entering the Unit; (f) any other information the Association deems appropriate to include, and (2) post the written notice described above on the front door to the Unit at least seven (7) days prior to entry into the Unit.

- (c) Notice to a Lender.** 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 seventy-two (72) hours after such deposit. Lenders of a mortgage on a Unit should receive timely notice of:

1. Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage,
2. A sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which the Lender holds a mortgage,
3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association, and
4. Any proposed action that requires the consent of a specified percentage of Lenders

(d) Notice to Association from an Owner.

1. An Owner's Notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) by a written notice delivered personally to the managing agent, which shall be effective upon delivery;
 - (ii) by a written notice placed in first-class, United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
 - (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or
 - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 18 – ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

- (a) **Owners Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Term and Condition after Notice to the Owner that it intends to enforce the Term and Condition, or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) **Costs.** The term "costs" as used in this Section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) **Exception to Owner's Liability for Fees and Costs.** If, related to (1) any dispute with an Owner, (2) any challenge by an Owner to a position of the Association on a Term and Condition, or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (1) the association could not establish an initial position on without having incurred the fees and costs, or (2) results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

ARTICLE 19 – RESERVES

- 19.1 **Requirement for Reserves.** The Association shall maintain a reasonable reserve fund for the maintenance, repair, and replacement of the Residential Common Area and related Limited Common Area as determined by the Residential Owners annually. Reserve funds may be collected as part of the monthly Assessments.
- 19.2 **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- 19.3 **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.

19.4 **Reserve Analysis.** The Association shall cause a reserve analysis to be conducted and regularly updated a minimum of once every two years. The reserve analysis report shall be prepared by a person or persons with (1) experience in current building technologies, (2) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, but subject to the discretion of the Management Committee in determining that the qualifications have otherwise been met by one person, two people shall prepare the reserve study, an architectural consultant who will perform a property condition assessment and a reserve study professional who will utilize the property condition assessment and prepare the reserve study. The reserve analysis shall, at a minimum, determine the need for and appropriate amounts of a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas that have a useful life of three years or more. The Reserve studies and updates shall project a minimum of thirty (30) years into the future. Notwithstanding the foregoing, pursuant to Utah Code 57-8-7.5(10), during the Control Period no reserve analysis is required.

19.5 **Disclosure and Approval at Annual Meeting.** The Association shall:

(a) annually, at the annual meeting of Owners or at a special meeting of Owners:

1. present the most recent reserve study;
2. provide an opportunity for Owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount; and

(b) prepare and keep minutes of each meeting held under Section 19.5(a) and indicate in the minutes any decision relating to funding a reserve fund.

ARTICLE 20 – LEASING AND NON-OWNER OCCUPANCY

20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Residential Unit shall be governed by this Article 20, the Rules, and procedures adopted as allowed in this Article 20.

20.2 **Definitions.** For the purpose of this Section:

(a) "Non-Owner Occupied Unit" means:

1. For a Residential Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Residential Unit as the individual Owner's primary residence; or
2. For a Residential Unit owned entirely by one or more entities or trusts, the Residential Unit is occupied by anyone.

(b) "Family Member" means:

1. the parent, sibling, or child of an Owner and that person's spouse and/or children; or
2. in the case of a Residential Unit owned by a trust or other entity created for estate planning purposes, a person occupying the Residential Unit if the trust or other estate planning entity that owns the Residential Unit was created for the estate of (i) a current occupant of the Residential Unit or (ii) the parent, child, or sibling of the current occupant of the Residential Unit.

20.3 **Restriction on Leasing and Non-Owner Occupancy.** Subject to the provisions of this Article 20, the number of Residential Units permitted to be Non-Owner Occupied may not exceed twenty percent (20%) of the total Residential Units in the Project.

20.4 **Units Exempt From the Limitation on Non-Owner Occupied Units.** Notwithstanding the restrictions on the number or term of leasing set forth in this Article 20, Owners and Residential Units are exempt from the restrictions set forth in this Article 20:

- (a) during the period of time of an Owner's deployment due to military service;
- (b) during the period of time an Owner whose employer has relocated the Owner, but only for a period of two years or less;
- (c) during the period of time a Unit is owned by an entity that is occupied by an individual who:
 1. has voting rights under the Association's Governing Documents; and
 2. has a 25% or greater share of ownership, control, and right to profits and losses of the entity.

(d) In the event a lease in a Unit is entered into before a rental restriction contained in this Article 20 is recorded with the Wasatch County Recorder's Office, said lease may continue until:

1. the Owner occupies the Unit;
2. an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit; or
3. the Unit is transferred.

20.5 **Permitted Rules.** The Management Committee may adopt Rules requiring:

- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the occupants of those Units other than those found in this Article 20, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc;
- (b) reasonable fees related to the administration of leased and Non-Owner occupied Units; and
- (c) other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.
- (d) The Association shall create, by rule or resolution, procedures to ensure consistent administration and enforcement of the rental restrictions contained in this Declaration.

20.6 **Required Rules.** The Management Committee shall adopt Rules, resolutions, or procedures to: (a) determine and track the number of Units that are leased, (b) provide for a waiting list if the maximum number of units are available to lease are leased and additional owners want to lease Unites, (c) determine and track the number of Unites exempt under section 20.5.

20.7 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Residential Units must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws,

and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident;

- (b) If required in the Rules of the Association or requested by the Management Committee, a copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Management Committee;
- (c) No owner shall lease or allow any non-owner to use any Residential Unit for transient, short-term (less than twelve (12) months), hotel, rental pool or corporate/exclusive use purposes, resort, vacation, or seasonal use (whether for pay or not);
- (d) Daily and weekly occupation by non-owner occupants is prohibited (whether for pay or not); and
- (e) The Owner(s) of a Unit shall be responsible for the non-owner occupant or any guest's compliance with the Declaration, Bylaws, and Rules. The Owner and non-owner occupant, or other similarly situated individual, shall be jointly and severally liable for any violations of the Governing Documents. In addition to any other remedy for noncompliance with the Governing Documents, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Management Committee, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

20.8 **Exceptions for Family Members.** If only Family Members occupy a Residential Unit, then notwithstanding anything to the contrary herein:

- (a) Subsections 20.5(a), 20.5(c), & 20.5(d) of Section 20.5 shall not apply to that occupancy;
- (b) no written agreement regarding occupancy needs to be created between the family member and the Owner; and
- (c) any written agreement regarding occupancy may not be requested by the Management Committee until an occupant has violated a provision of the Governing

Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

- 20.9 **Consistent Administration and Enforcement.** The Management Committee and Manager of the Association will create, by rule or resolution, procedures to ensure consistent administration and enforcement of the rental restrictions contained in this Declaration.
- 20.1 **No Application to Commercial Units.** Nothing in this Article 20, nor anything in this Declaration is intended to prohibit or limit the ability for Owners of Commercial Units from leasing or renting.

ARTICLE 21 – GENERAL PROVISIONS

- 21.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 **Non-liability of Officials.** To the fullest extent permitted by applicable law, neither the Management Committee 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.
- 21.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Residential Common Area, and for other permitted purposes, as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area, and other than as a result of expenditures made for other permitted purposes, as set forth in this Declaration).
- 21.4 **Notification of Reinvestment Fee.** Except as otherwise limited by law, the management Committee may establish a Reinvestment Fee Assessment, from time-to-time, which shall be no more than 0.3% of the value of the Unit, and which shall be due and payable immediately after any sale or other transfer of any Unit. The Management Committee shall have authority to set forth in the Rules the date, time for payment, amount, the requirements for any information that is required from any transferee of any Residential Unit upon any sale or transfer, and any other procedures or requirements related to the

Reinvestment Fee Assessment. The Reinvestment Fee Assessment shall be due after the transfer.

- 21.5 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of an Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other persons harmless from, and to defend such persons against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 21.6 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.
- 21.7 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason, including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct, and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Management Committee are not insurers of the safety or well-being of Owners or Occupants, or of their personal

property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 21.8 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.9 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT, 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 PROJECT.

ARTICLE 22 – DECLARANT RIGHTS

- 22.1 **Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the rights provided for in this Article 22 (the "Special Declarant Rights").
- 22.2 **Right to Appoint the Management Committee during Control Period.** The Declarant shall have the right to appoint and remove all Management Committee Members during the Declarant Control Period and in the appointment of Committee Members shall not be bound by any qualifications for Management Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of three members until the Control Period ends.
- 22.3 **Control Period.** Declarant shall have the right to retain control, power, and authority over, and all decision-making ability or authority for, the Association and/or the Project during

the "Control Period." The Declarant shall determine whether to hire professional management during the Control Period. The Control Period shall extend until the first to occur of the following: (i) the Declarant elects, in writing, to terminate the Control Period or (ii) one year after the Declarant no longer owns a Unit in the Residential Association.

- 22.4 **Easement Rights.** The Declarant shall have an easement for access across the entire Project and may utilize, allow anyone else to utilize, or may grant easements over and through any easement right reserved to anyone in the Declaration.
- 22.5 **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.
- 22.6 **Assessment Rights.** The Declarant shall have the right to set all Assessments, regular and special during the Control Period. No Units owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments.
- 22.7 **Right to Amend Declaration, Bylaws, and Rules.** Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, the Bylaws, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to, the Owners. Any such amendment to the Bylaws or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer or manager of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all persons having an interest therein including all Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.
- 22.8 **Expansion of Project / Additional Land.** The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason.
- 22.9 **Assignment of Special Declarant Rights.** Declarant may, at any time, by recording a written notice, assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other person or entity prior to the time period described above. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this

Declaration may be exercised by any Owner of the undeveloped land within the project or to be expanded into the Project, or unfinished Units.

- 22.10 **Exceptions from Use Restrictions.** The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.
- 22.11 **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents, and specifically in this Article 22, and any provisions in Article 23, shall not be substantively or procedurally altered without the written consent of the Declarant until fourteen (14) years have passed after the Control Period has ended, at which time the Declarant approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declarant or any provision of Article 22 or Article 23, without the consent of the Declarant.
- 22.12 **Use of Units and Common Areas.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one or more sales offices and model Units, both during and after the Control Period. Such offices and model Units may be located in any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. To ensure uniform and consistent marketing of the Units for the benefit of the Association and the Owners, all sales of Units during the Declarant Control Period, including Units no longer owned by the Declarant, must utilize only the real estate sales agent specified and approved by the Declarant. The Declarant shall also have the right to maintain any number of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any Common Area parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time-to-time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices.
- 22.13 **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Article 22 do not impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and any Owner hereby expressly waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

ARTICLE 23 – CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION

- 23.1 **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or any aspect of the Common Area prior to purchasing a Unit. Moreover, an Owner Warranty has been provided to each Owner identifying those items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty, and having paid market price for a Unit in the condition it and the related Common Area is in at the time of purchase, it is acknowledged that it is unfair and improper to then seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Unit and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms, and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners by and upon the purchase of a Unit, that these warranties, if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages arising from defects of any kind related to construction or development of the Project. The intent of this Section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the buildings and fixtures on the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.
- 23.2 **Association Warranties.** The Declarant may, but is not obligated, to provide certain warranties to the Association related to the construction of the Project ("Association

Warranty"). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

- 23.3 **Owner Warranties.** The Declarant has provided certain warranties to the Owners related to the Unit purchased ("Owner Warranty"). The first Owner of a Unit to whom the warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties from the Declarant to any Owner, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

23.4 **Declarant Litigation.**

- (a) An Owner may only make a claim against the Declarant for the failure to comply with the Owner Warranty, any other Warranty implied by law and not validly disclaimed in this Declaration, or for any other claim of any kind, after the following efforts at dispute resolution have been completed: (1) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant 180 days to cure or resolve the claim or defect, or to try to get the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (2) if the dispute is not resolved within the 180 day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not previously included in any Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action, including any mediation or arbitration, shall be stayed for the 180 day period.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Developer by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall mutually work, in good faith, to agree upon the arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration and the rules

applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the rules and this Declaration.

- (c) "Notice of Claim" shall mean and include the following information: (1) The nature of the claim; (2) a specific breakdown and calculation of any alleged damages; (3) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (4) photographs of any alleged condition, if applicable; (5) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (6) the names, phone numbers, and address of every person providing information, analysis, or opinions related to the claim.
- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant or any of its officers, directors, members, employees, or agents for any reason, including, but not limited to, alleged construction defects, any related damages, or any damages arising therefrom.
- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant or any of its officers, directors, members, employees, or agents for any reason, including, but not limited to, alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Association shall indemnify and defend the Declarant and its officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that these warranties and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim and to indemnify Declarant from any liability arising therefrom.

- (g) Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.
- (h) If otherwise allowed by law notwithstanding the terms of this Declaration, or if allowed in this Declaration, prior to the Association making any demand or commencing any mediation, arbitration, or litigation against a Declarant or any subcontractor, other than a claim made solely upon an Association Warranty against a Subcontractor, the Association must have a meeting of the Owners, with proper notice, and have all attorneys, experts, and other persons expected to be involved in the claim present at the meeting. Those people present, including the Management Committee, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the meeting must include the following information: (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22 point font: "The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this Project. This litigation could cost you money in the form of increased Assessments and will likely impact the resale value of your Unit and your ability to sell your Unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue."; (ii) a budget and detailed breakdown of all costs and legal fees associated with the expected litigation, including a breakdown of any costs and fees to be advanced by any representative of the Association and all those to be paid directly, all of which shall assume the litigation will last three years and require a hearing on the merits; (iii) a detailed explanation of where any money to be paid by the Association will be obtained, including a per Unit breakdown of all costs and fees per year, assuming the litigation will last three years; (iv) a written statement of each Management Committee Member indicating that person's position on the litigation; (v) an opinion from an attorney other than the attorney considered to bring any such action analyzing the law and all relevant facts and providing an opinion on the likelihood of success of any such litigation or arbitration; (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action.
- (i) The existence of procedures and/or requirements in this Section applicable to claims against the Declarant or subcontractors that are barred or limited in other provisions of


this Declaration shall not be construed as permitting any such claims, or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and owner approval requirements, the mediation requirement, and the arbitration requirements) that is prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.

- 23.5 **Land Owners.** All persons owning land that is initially or subsequently incorporated into the Project, and who sign the Declaration or any amendment thereto, subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 23.

[Signature on the Follow Page]


EXECUTED this 3 day of June, 2021

Apollo Square, LLC

By: 
Its: Manager

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 3 day of June, 2021, personally appeared before me Mason Dutton, the signer of the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR APOLLO SQUARE CONDOMINIUM ASSOCIATION, INC. on behalf of Apollo Square, LLC, and who duly acknowledged to me executing the same.



Notary Public

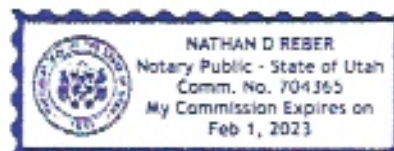


EXHIBIT A

Allocated Interest

Unit No.	Unit Type	Size	Allocated Interest	Initial Assessment
201	Residential	2 Bed 2.5 Bath	3.225806451612903	210
202	Residential	2 Bed 2.5 Bath	3.225806451612903	210
203	Residential	2 Bed 2 Bath	3.225806451612903	200
204	Residential	2 Bed 2 Bath	3.225806451612903	200
205	Residential	2 Bed 2 Bath	3.225806451612903	200
206	Residential	2 Bed 2 Bath	3.225806451612903	200
207	Residential	2 Bed 2.5 Bath	3.225806451612903	210
208	Residential	2 Bed 2.5 Bath	3.225806451612903	210
209	Residential	2 Bed 2.5 Bath	3.225806451612903	210
210	Residential	2 Bed 2.5 Bath	3.225806451612903	210
211	Residential	2 Bed 2.5 Bath	3.225806451612903	210
212	Residential	3 Bed 3.5 Bath	3.225806451612903	250
213	Residential	2 Bed 2.5 Bath	3.225806451612903	210
214	Residential	2 Bed 2.5 Bath	3.225806451612903	210
215	Residential	2 Bed 2 Bath	3.225806451612903	200

301	Residential	2 Bed 2.5 Bath	3.225806451612903	210
302	Residential	2 Bed 2.5 Bath	3.225806451612903	210
303	Residential	2 Bed 2 Bath	3.225806451612903	200
304	Residential	2 Bed 2 Bath	3.225806451612903	200
305	Residential	2 Bed 2 Bath	3.225806451612903	200
306	Residential	2 Bed 2 Bath	3.225806451612903	200
307	Residential	2 Bed 2.5 Bath	3.225806451612903	210
308	Residential	2 Bed 2.5 Bath	3.225806451612903	210
309	Residential	2 Bed 2.5 Bath	3.225806451612903	210
310	Residential	2 Bed 2.5 Bath	3.225806451612903	210
311	Residential	2 Bed 2.5 Bath	3.225806451612903	210
312	Residential	3 Bed 3.5 Bath	3.225806451612903	250
313	Residential	2 Bed 2.5 Bath	3.225806451612903	210
314	Residential	2 Bed 2.5 Bath	3.225806451612903	210
315	Residential	2 Bed 2.5 Bath	3.225806451612903	210
316	Residential	3 Bed 2.5 Bath	3.225806451612903	240
Total			99.9%	

EXHIBIT B

Bylaws

EXHIBIT C

Description of Property

A parcel of land situate in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 2 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point being South 21.94 feet and West 99.28 feet from the North Quarter Corner of Section 10, Township 2 South, Range 1 East Salt Lake Base and Meridian, said section corner being South 65°41'30" West 157.15 feet and South 15°25'30" East 178.44 feet from a centerline monument at the intersection of Murray-Holladay Road and Holladay Boulevard; and running

thence South 59°31'56" West 209.38 feet to and along a concrete masonry unit wall more or less;

thence South 65°41'30" West 239.15 feet continuing along said wall;

thence North 46°25'0" West 148.85 feet to the Northerly Right of Way Line of Murray-Holladay Road;

thence along said Northerly Right of Way Line the following three (3) courses:

(1) North 65°41'30" East 321.16 feet

(2) North 24°18'30" West 7.00 feet;

(3) North 65°41'30" East 134.72 feet;

thence South 45°30'00" East 131.32 feet to the point of beginning.

Limited to Levels 2, 3 and rooftop terrace and excluding level 1.

Contains: 61,584 Square Feet or 1.414 Acres