

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

FOR

CHATEAU FORET PHASE II
CONDOMINIUM DEVELOPMENT

IN

HOLLADAY CITY
SALT LAKE COUNTY, UTAH

Effective on the Date of Recording with the Salt Lake County Recorder

TABLE OF CONTENTS

RECITALS..... 1

ARTICLE 1: DEFINITIONS 1

ARTICLE 2: THE CONDOMINIUM DEVELOPMENT 4

2.1 Submission to the Act 4

2.2 Binding Effect of Governing Documents 4

2.3 Condominium Development Name..... 4

2.4 Nature of the Condominium Project 4

2.5 Identification of Units 5

2.6 Registered Agent 5

ARTICLE 3: DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, AND UNDIVIDED INTERESTS 5

3.1 The Unit 5

3.2 Limited Common Area 6

3.3 Undivided Percentage Interest of Each Unit and Method for Allocating Voting in and Assessments of the Association..... 7

3.4 Plat..... 7

ARTICLE 4: MAINTENANCE, REMODELING, AND UTILITIES..... 7

4.1 Owner Responsibility..... 7

4.2 Association Responsibility..... 9

4.3 Owner Approval for Certain Improvements 10

4.4 Standard of Maintenance..... 10

4.5 Default in Maintenance 10

4.6 Landscape Maintenance 10

4.7 Remodeling, Maintenance, and Repair of Units 10

4.8 Utilities..... 11

4.9 Association Responsibility for Certain Limited Common Area Features 11

ARTICLE 5: ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION 11

5.1 Organization of Association..... 11

5.2 Modifying or Changing the Name of the Condominium Development 11

5.3 Legal Organization..... 11

5.4 Membership..... 11

5.5 Availability of Documents 12

5.6 Board of Trustees 12

5.7 Board of Trustees Member Requirements 12

5.8 Limitation on Authority of Owners, Board of Trustees Members, Officers, & Committee12

5.9 Registration with the State 13

ARTICLE 6: GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

6.1 Rights and Responsibilities of the Association 13

ARTICLE 7: BUDGETS & ASSESSMENTS..... 15

7.1 Purpose of Assessments 15

7.2 Budget and Regular Assessment 15

7.3 Payment of Regular Assessments 15

7.4 Adjustments to Regular Assessments 16

7.5 Personal Obligation for Assessment 16

7.6 Improvements..... 16

7.7 Allocation of Assessments 16

7.8 Rules Regarding Billing and Collection Procedures..... 16

7.9 Statement of Unpaid Assessment..... 16

7.10 Account Payoff Information 16

7.11 General Special Assessments..... 17

7.12 Individual Special Assessments to Individual Units 17

7.13 Acceptance of Materials or Services 17

7.14 Application of Excess Assessments 17

7.15 No Offsets 18

7.16 Application of Payments..... 18

7.17 Administration of Assessment Funds..... 18

7.18 Reinvestment Covenant upon Sale or Transfer of Unit 18

ARTICLE 8: NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY

.....**19**

8.1 Delinquency 19

8.2 Collection Charges and Interest 19

8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently
Accruing Unpaid Assessments..... 19

8.4 Lien 19

8.5 Action at Law 20

8.6 Foreclosure Sale 20

8.7 Association Lien Not Subject to Homestead Exemption..... 20

8.8 Termination or Suspension of Delinquent Owner’s Rights 20

8.9 Requiring Tenant to Pay Rent to Association 20

8.10 Attorney Fees Incurred as a Result of a Default 21

8.11	Association Foreclosure	21
ARTICLE 9: PROPERTY RIGHTS IN UNITS AND COMMON AREA		21
9.1	General Easements to Common Area and Units	21
9.2	Sale, Conveyance, Lease, or Hypothecation of Common Area	22
9.3	Public Utilities.....	22
9.4	Easements for Encroachments	22
9.5	Limitation on Easement; Suspension of Owner’s Rights	23
9.6	Views.....	23
ARTICLE 10: USE LIMITATIONS AND CONDITIONS		23
10.1	Rules.....	23
10.2	Signs.....	23
10.3	Nuisance.....	24
10.4	Smoking	24
10.5	Temporary Structures.....	24
10.6	Parking	24
10.9	Holiday Decorations.....	25
10.10	Items in Common Area in Front of Unit Doors	25
10.11	Common and Limited Common Area Use Restrictions.	25
10.12	Animals.	25
10.13	Residential Occupancy.....	25
10.14	No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions	26
10.15	Firearms.....	26
10.16	Garage Sales.....	26
10.17	Lighting and Security Fixtures.....	26
10.18	Unsightly Items	26
10.19	Dumpster.....	27
10.20	Variances.....	27
10.21	Hazardous Substances	27
ARTICLE 11: INSURANCE		28
11.1	Insurance Requirement.....	28
11.2	Property Insurance	28
11.3	Comprehensive General Liability (CGL) Insurance	31
11.4	Director’s and Officer’s Insurance.....	31
11.5	Insurance Coverage for Theft and Embezzlement of Association Funds	32
11.6	Workers’ Compensation Insurance	32

11.7	Certificates	32
11.8	Named Insured	32
11.9	Right to Negotiate All Claims and Losses and Receive Proceeds	32
11.10	Insurance Trustee	33
11.11	Owner Act Cannot Void Coverage Under Any Policy	33
11.12	Waiver of Subrogation against Owners and the Association	33
11.13	Right of Action.....	33
11.14	Applicable Law	33
ARTICLE 12: DESTRUCTION OF IMPROVEMENTS		33
12.1	Reconstruction.....	33
12.2	Insurance Proceeds Sufficient for Reconstruction	34
12.3	Insurance Proceeds Insufficient for Reconstruction	34
ARTICLE 13: EMINENT DOMAIN.....		35
13.1	Total Taking of a Unit.....	35
13.2	Partial Taking of a Unit.....	35
13.3	Taking of Limited Common Area.....	35
13.4	Taking of Common Area	35
13.5	Taking of Entire Condominium Development.....	35
13.6	Priority and Power of Attorney	36
ARTICLE 14: TERMINATION OF CONDOMINIUM DEVELOPMENT OR SALE OF PROPERTY		36
14.1	Required Vote	36
14.2	Sale of Condominium Development Following Termination.....	36
14.3	Sale of Condominium Development Without Termination.....	36
14.4	Sale Agreement	36
14.5	Association Duties	36
14.6	Proceeds of Sale	37
14.7	Allocation upon Termination or Sale.....	37
ARTICLE 15: AMENDMENTS		37
15.1	General Amendment Requirements	37
15.2	Scope of Amendments	37
15.3	Execution and Effective Date of Amendments	38
15.4	Changes to Plat or Boundaries of the Association	38
15.5	Amendment to Conform to Law	38
15.6	Consent of Two-Thirds Owners to Alter Undivided Interests	39

ARTICLE 16: INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION	39
16.1 No Waiver	39
16.2 Conflicting Provisions.....	39
16.3 Interpretation of Declaration and Applicability of the Act	39
16.4 Cumulative Remedies	39
16.5 Severability	40
16.6 Construction	40
16.7 Applicable Law	40
16.8 Gender and Number	40
16.9 Effect of Declaration	40
ARTICLE 17: NOTICE.....	40
17.1 Notices.....	40
ARTICLE 18: ATTORNEY FEES AND COSTS	43
18.1 Legal Costs Associated with Disputes with Owners.....	43
ARTICLE 19: RESERVES.....	44
19.1 Requirement for Reserves	44
ARTICLE 20: LEASING AND NON-OWNER OCCUPANCY.....	45
20.1 Declaration and Rules Governing Non-Owner Occupancy	45
20.2 Definitions.....	45
20.3 Limitation on Non-Owner Occupancy.....	46
20.4 Units Exempt from the Limitation on Non-Owner Occupied Units	46
20.5 Grandfathered Units	46
20.6 Permitted Rules	47
20.7 Required Rules	47
20.8 Requirements for Leasing and Non-Owner Occupancy	47
20.9 Exceptions for Exempt Units	48
20.10 Joint and Several Liability of Owner and Non-Owner Occupants	48
ARTICLE 21: RIGHTS OF LENDERS.....	48
21.1 Notice to Lender.....	49
21.2 Books and Records.....	49
21.3 Damage or Condemnation.....	49
21.4 Notice of Default, Lapse, or Action	49
21.5 Consent of Lenders.	49
21.6 Relationship with Assessment Liens.....	49
ARTICLE 22: GENERAL PROVISIONS	50

22.1	Enforcement	50
22.2	Non-liability of Officials	50
22.3	Use of Funds Collected by the Association	50
22.4	Owner Liability and Indemnification	51
22.5	Consent, Power of Attorney, Waiver	51
22.6	Security	51
22.7	Reasonable Accommodations	51
22.8	No Representations and Warranties	52

EXHIBIT A: Legal Description

EXHIBIT B: Bylaws

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CHATEAU FORET PHASE II CONDOMINIUM DEVELOPMENT

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Chateau Foret Phase II Condominium Development (this “Declaration”) is recorded by Chateau Foret Phase II Condominium Development (the “Association”), upon its approval by the Owners, and is effective as of the date it is recorded in the office of the Salt Lake County Recorder.

RECITALS

Whereas, that certain Declaration of Covenants, Conditions and Restrictions of Chateau Foret Phase II Condominium Development, dated April 22, 1996, were caused to be recorded by the Declarant in the office of the Salt Lake County Recorder (the “Original Declaration”) as Entry No. 6349219 in Book 7392 at Page 1933 through 1959; which Original Declaration documented the conversion of the existing property and buildings from an apartment complex to a condominium development by the property owner who was the Declarant in the Original Declaration and remained such until all of the pre-existing apartments and redesignated condominium units had been sold; and which conversion and recording of the Original Declaration subjected the property, improvements and each subsequent Unit Owner to the Utah Condominium Association Act.

Whereas, the First Amendment of Declaration of Covenants, Conditions and Restrictions of Chateau Foret Phase II Condominium Development was recorded on June 24, 2003 in the office of the Salt Lake County Recorder, as Entry No. 8702352 in Book 8824 at Pages 4999-5051 (the “First Amended Declaration”);

Whereas, the Second Amendment of Declaration of Covenants, Conditions and Restrictions of Chateau Foret Phase II Condominium Development was recorded on July 22, 2004 in the office of the Salt Lake County Recorder, as Entry No. 9127440 in Book 9017 at Pages 1330-1336;

Whereas, the legal description of the Chateau Foret Phase II Condominium Development in Salt Lake County, Utah, including reference to each Unit contained therein and to which ownership of each Unit is subject thereto and governed thereby, is set forth in the attached Exhibit “A;”

Whereas, on the recommendation of the Board of Trustees and, pursuant to Article 17.03 of the First Amended Declaration, the Unit Owners, by the affirmative vote of at least sixty-seven percent of the votes allocated to all Units, have determined it necessary to amend and restate the Original Declaration, as amended.

NOW, THEREFORE, for the reasons recited above the Association hereby amends and restates this Declaration in its entirety as follows:

**ARTICLE 1:
DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “**Act**” shall mean the Condominium Ownership Act codified at Utah Code Ann. §§ 57-8-1 *et seq.*, as may be amended from time to time.

- 1.2 **“Articles”** shall mean the Articles of Incorporation or the chartering document under the Utah Revised Non-Profit Corporation Act, as may be amended from time to time.
- 1.3 **“Assessment”** shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
- 1.4 **“Association”** shall refer to the Association of Unit Owners of Chateau Foret Phase II Condominium Development, the membership of which shall include each Owner in the Condominium Development. The Association is a Utah nonprofit corporation.
- 1.5 **“Board of Trustees” or “Board”** shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce reasonable Rules covering the operations and maintenance of the Condominium Project.
- 1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Trustees.
- 1.7 **“Building”** shall mean the building(s) containing the Units in the Condominium Project.
- 1.8 **“Bylaws”** shall mean the bylaws of the Association attached as **Exhibit C**, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.9 **“Capital Improvement”** shall mean and refer to non-recurring expenses (as opposed to day to day operating expenses) to repair, maintain, repurpose, replace, refurbish and eliminate significant fixed assets in the Common Area of the Project, such as the roofs, entry areas, roads, green space, sidewalks, recreational facilities, spaces, fixtures, furnishings and equipment within or around the pool house, pool, and other Project amenities intended to restore, enhance, improve, make safe or ameliorate the obsolescence, utility, usefulness, economies, value and beauty of the Common Areas and Project facilities.
- 1.10 **“Common Area and Facilities”** shall, unless otherwise more specifically provided, included or excluded on the Plat or in this Declaration, mean everything and everywhere in the Condominium Project that is not part of a “Unit” as that term is defined herein and includes the “Limited Common Areas” as that term is defined herein. The definition of Common Area in this Declaration shall supersede the definition of “Common Area and Facilities” and shall apply in all instances when that term is used in the Act.
- 1.11 **“Common Expenses”** shall mean all sums lawfully assessed against the Unit Owners for expenses incurred by the Association, including, but not limited to those incurred by the Association as provided for or allowed in the Act or the Governing Documents and any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.
- 1.12 **“Community Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community as may be reviewed and specifically determined from time to time by the Board of Trustees.
- 1.13 **“Condominium Development”** shall mean the Chateau Foret Phase II Condominium Development and the land upon which it is located, and includes, whether leasehold or in fee simple, the Building(s), all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith; as defined by the Plat and this Declaration and including the Units, the

Common Area, and the Limited Common Areas. Condominium Development as defined in this Declaration is intended to have the same definition as “Property” defined in the Act.

- 1.14 **“Declaration”** shall mean this Amended and Restated Declaration (“Declaration”) including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and all amendments to this Declaration hereafter adopted.
- 1.15 **“Demising” or “Party Wall”** means each wall or ceiling-floor physical boundary which is built as part of the original construction, or reconstruction, of the Buildings and placed on the dividing line (whether horizontal or vertical) between Units.
- 1.16 **“Electronic Transmission” or “Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.17 **“Governing Documents”** shall refer to this Declaration, its exhibits, including the legal description and Bylaws, the Plat, the Rules and Regulations promulgated by the Association, Articles of Incorporation, and any other documents or agreements binding upon all of the Owners.
- 1.18 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit who has requested notice in writing from the Association in accordance with this Declaration.
- 1.19 **“Limited Common Area(s) and Facilities”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Units to the exclusion of all other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of the Unit, which include, but are not limited to, certain covered parking spaces assigned to each Unit pursuant to the Association’s Governing Documents.
- 1.20 **“Manager”** shall mean any Person engaged by the Association to manage the Condominium Project.
- 1.21 **“Occupant”** shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit in the Condominium 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).
- 1.22 **“Owner”** shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the Salt Lake County Recorder; however, Owner shall not include a trustee for a deed of trust.
- 1.23 **“Parking”** shall mean all clearly marked, off street parking places wherever located in the Common Areas of the Project, except those found in the Limited Common Areas.
- 1.24 **“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.

- 1.25 **“Plat”** shall mean the record of survey map or maps of the Condominium Development (the “condominium plat” as used in the Act) recorded in the records of the Salt Lake County Recorder and all amendments and supplements thereto.
- 1.26 **“Property”** shall mean the property legally described in **Exhibit A** and all easements and rights appurtenant thereto.
- 1.27 **“Rate of Assessment”** means the rate at which each Unit is assessed. The rate is the same as the Undivided Interest appurtenant to each Unit defined below. The Rate of Assessment is an equal rate of assessment.
- 1.28 **“Rules”** shall mean and refer to the rules adopted by the Board of Trustees.
- 1.29 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.30 **“Undivided Interest”** shall mean the equal, 1/144th undivided interest of an Owner in the Common Areas, regardless of the Unit’s relative height, views, amenities, characteristics or size as depicted in the Plat or resulting market value and entitling the Owner of a Unit to equal voting and an equal Rate of Assessment as among and between all other Units.
- 1.31 **“Unit”** shall mean an individual condominium unit, unit, or condominium (all as defined in the Act and also Article 3.1 below), which shall consist of a separate physical part of the Property intended for independent, exclusive use of the Unit Owner, including one or more rooms or spaces located in a Building, and which is identified on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the equal Undivided Interest appurtenant to such Unit. Anything not included in this definition of Unit shall be considered Common Areas or Limited Common Areas.

**ARTICLE 2:
THE CONDOMINIUM DEVELOPMENT**

- 2.1 **Submission to the Act.** The Association hereby confirms and restates that the Condominium Development is a condominium project as defined in the Act.
- 2.2 **Binding Effect of Governing Documents.** The Property is part of the Condominium Development and the Condominium Development and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit the Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.3 **Condominium Development Name.** The Condominium Development, as identified on the Plat(s), is named “Chateau Foret Condominium Development” and is located entirely in Holladay City, Salt Lake County, Utah
- 2.4 **Nature of the Condominium Project.** The Condominium Project primarily contains 144 Units in 14 Buildings. The Buildings are predominantly three story “condominium” style Buildings with 6 to 24 Units in each Building that share walls and floors with 3 to 4 other Units. The Buildings are composed of wood frame floors, walls and roofs, concrete foundations and floors, wood veneer, brick and asphalt shingle and membrane roofs. The Condominium Project further

includes a swimming pool, sidewalks, driveways, private asphalt streets and off street parking, open space landscaping, and other Common Areas.

- 2.5 **Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.6 **Registered Agent.** The registered agent of the Association shall be as provided for in the entity filings of the Association with the State of Utah. The Board of Trustees may approve a change in the registered agent of the Association without any need for Owner consent.

**ARTICLE 3:
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA,
AND UNDIVIDED INTERESTS**

3.1 **The Unit.**

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification in this Declaration, each Unit consists of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal and vertical boundaries of each Unit shall be the underside of the finished (dry wall) of each demising wall and level of the Unit, and the underside of whatever finishing material applied to the concrete or plywood sub-floor. The structural components of the demising wall between the Unit boundaries and of the respective levels of the Units as shown on the Plat and all exterior framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing, structures, and concrete in any bearing walls are part of the Common Area. Generally, all concrete, wood or metal framing in exterior and demising walls, ceilings, and floors between the boundaries of the Unit are not part of the Unit and are Common Area. All materials constituting any part of the finished surfaces, including drywall, or of the decorating in the Unit are part of the Unit. Generally, all paneling, tile, wallpaper, paint, carpet, hardwood flooring, linoleum, and other materials constituting any part of the finished surfaces or installed on the framing and sub-surfaces in a Unit are part of the Unit. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures located inside the designated vertical and horizontal boundaries of a Unit and those between the point at which the same enter the Owner's Unit and the closer of the point where the same join the utility lines serving another Unit or exiting the Building, are part of the Unit
- (d) All windows and window frames, doors and door frames, and window and door trims, both interior and exterior are part of the Unit.
- (e) The boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral

movement of the Building and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.

- (f) Each Unit, together with its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered and may be inherited or devised by will. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.
- (g) Each Unit shall be assessed separately for property taxes, assessments, and other charges of the state of Utah or of any political subdivision or special improvement district or of any other similar authority. The Common Area shall not be subject to separate taxation or assessment.
- (h) Each Owner may separately convey, encumber, or mortgage the Owner's Unit. No Owner may encumber the Common Areas, except to the extent of the Owner's Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest and in the event of any foreclosure (judicial or otherwise) the Person taking title shall be subject to this Declaration.

3.2 **Limited Common Area.**

- (a) The Limited Common Area associated with each Unit shall consist of areas identified on the Plat or in this Declaration as Limited Common Area. The Association has the right to enter and inspect such Limited Common Area to ensure compliance with this Declaration and to fulfill its maintenance responsibilities for Common Areas.
- (b) The individual covered parking stalls assigned to each Unit, the portion of the landings and the entry threshold appurtenant to each Unit and the deck and/or patio accessible through and exclusive to each Unit are part of the Limited Common Area intended for the exclusive use of a Unit Owner.
- (c) As set forth in Article 4.1(d), an Owner must receive Board approval before altering in any way any portion of the Limited Common Area appurtenant to his/her/its Unit.
- (d) All doors and windows (including any screen, screen door, storm door, or sliding door), and windows of any Unit and associated thresholds, jambs, hinges, doorbells, chimes, handles, and locks and all components therein, intended to serve an individual single Unit, but located outside the exterior boundary of the Unit, shall constitute Limited Common Area appurtenant to that Unit.
- (e) Should it be unclear from the Plat or this Declaration if a particular area is Common Area or Limited Common Area, the Board of Trustees shall have absolute authority in determining the proper designation of that area.
- (f) If any area designated as Limited Common Area in the Plat, the Declaration, or (if unclear) by the Board of Trustees, is not physically associated with a particular Unit and is not identified as pertaining to a particular Unit in the Plat or this Declaration, the Board of Trustees may determine to which Unit the Limited Common Area pertains based on the following factors: advice of counsel, fairness to all Owners, and any established use,

each of which shall have equal weight but none of which shall be individually determinative.

- (g) The right to the exclusive use of the Limited Common Area shall be appurtenant to each Unit where so identified and may not be severed from the ownership of the Unit.

3.3 Undivided Percentage Interest of Each Unit and Method for Allocating Voting in and Assessments of the Association. The Owners of each Unit are entitled to vote and are assessed their portion of any Assessments based on their equal 1/144th Undivided Interest in the Common Areas. Therefore, each Unit Owner is entitled to one vote and all assessments shall be equal and the same for all Unit Owners. Any difference in square footage, location, size, value, or other aspects of any Unit shall not be a reason to alter or change the equal Undivided Interest as presently calculated.

3.4 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Association and the Condominium Project. Notwithstanding the foregoing sentence, if any conflict exists between the Plat and this Declaration, this Declaration shall control.

ARTICLE 4: MAINTENANCE, REMODELING, AND UTILITIES

4.1 Owner Responsibility.

- (a) The Owner of a Unit shall furnish and be responsible for, at the Owner's own expense, all aspects of cleaning, maintenance, repair, and replacement regarding the Owner's Unit and Limited Common Areas assigned or appurtenant to Owner's Unit, including but not limited to:
 - (1) The entire Unit as described herein;
 - (2) All paneling, tile, 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 boundaries of the Unit as set forth herein;
 - (4) All framing, insulation, and other materials associated with interior nonbearing walls;
 - (5) All fixtures, appliances, and other improvements in the Unit;
 - (6) All equipment, lines, pipes, wiring, equipment, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, heating, air conditioning, internet, television, telephone, and any other utility service, wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively;
 - (7) All of the interior and the doors and windows, including any screen, screen door, storm door, or sliding door, and skylights of any Unit and associated thresholds, jambs, hinges, doorbells, chimes, handles, and locks and all components therein,

intended to serve an individual single Unit, but located outside the exterior boundary of the Unit, and materials and related frames, sashes, casings, jambs, interior sills, exterior seals and weather-strip, regardless of whether they are part of the Limited Common Area or Unit; and

- (8) Any storage area assigned to or owned by an Owner, if any, and located within the Condominium Development.
- (b) The Owner is further responsible for keeping the following areas in a clean and sanitary condition and free of pests, birds, rodents, animal waste, stains, tripping, or any other hazard:
 - (1) The Unit;
 - (2) Any Limited Common Area assigned or appurtenant to a Unit;
 - (3) Any storage area within the Condominium Project assigned to or associated with a Unit or owned by an Owner; and
 - (4) The interior and exterior surfaces of any window and door on the exterior boundary of the Unit.
- (c) An Owner, an Occupant of the Owner's Unit, an Owner's tenant, or any other person for whom Owner is responsible shall bear and may be assessed, jointly and severally, pursuant to Article 16(10) of the Declaration, all costs associated with repairing or replacing any Common Area which was damaged by the negligent or willful act of the Owner, an Occupant of the Owner's Unit, an Owner's tenant, or any other Person for whom the Owner is responsible.
- (d) Without the prior approval of the Board of Trustees, an Owner shall not replace or make any alterations, repairs, or modifications to the Owner's Unit, Limited Common Area appurtenant to his/her/its Unit, the Common Area, or any part of the exterior of a Building. 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 aesthetics requirements (including color, style, materials, etc.) or other standards. The Board of Trustees may adopt reasonable rules related to the oversight and advance approval of all maintenance, alterations, repairs or modifications made to Units or the Limited Common Areas appurtenant thereto and the Owner agrees to be subject to and bound by the same.
- (e) The Board of Trustees may set forth in the Rules complete restrictions on all or some items or specific restrictions or guidelines on what may or may not be kept, installed, or left on or in any storage area, parking area, or Limited Common Area.
- (f) Subject to an Owner's obligation to comply with Rules related to parking areas that may include requirements to keep such areas free of clutter, debris, and other items, the Association shall be responsible for cleaning parking areas.
- (g) The Association may establish Rules, policies, or guidelines to address areas of maintenance, repair, replacement, or cleaning unidentified or unresolved by this Declaration and to establish maintenance, repair, replacement, or cleaning responsibilities

and standards for components, fixtures, and areas in between, on, or straddling areas of different maintenance responsibility.

4.2 **Association Responsibility.**

- (a) Except as maintenance and cleaning obligations are otherwise assigned to the Owners or others in this Declaration, the Association shall repair, maintain, replace, and clean the Common Area, which shall include but not be limited to the obligation to repair, maintain, replace, and clean (as appropriate) the following:
- (1) All concrete and asphalt surfaces and installations in the Common Area and Limited Common Area;
 - (2) All framing and structural components of the building including the exterior and bearing walls and roof, but excluding anything within the defined boundary of the Unit;
 - (3) Any insulation in exterior walls, bearing walls, or in any other wall, ceiling or floor on the boundary to a Unit.
 - (4) The exterior surfaces of the Buildings and all components that are a part of the exterior surface of the Buildings, except that which is defined herein as part of the Limited Common Area appurtenant to a Unit.
 - (5) The roofs, rain gutters, fascia, soffits, and all related components;
 - (6) All equipment, lines, pipes, wiring, and fixtures related to the provision of: sewer drainage and waste removal and water, power and natural gas service to the boundary of each Unit, wherever they might be located but only to the extent and to the point in a utility service line where it divides to serve more than one Unit;
 - (7) The swimming pool, pool house and all similar amenities located in the Common Area;
 - (8) All Common Area stairways and common spaces;
 - (9) Certain aspects of the Limited Common Areas, except as otherwise set forth in this Declaration;
 - (10) All window wells and sump pumps located in a window well;
 - (11) Snow and ice removal from all sidewalks, walkways, driveways, and stairs; provided that the Association may adopt policies or Rules regarding how and when the snow may be removed from the stairways leading to the Units in the stacked condominium style Buildings; and
 - (12) All exterior landscaping including mowing the lawn, trimming the trees, weeding flowerbeds, etc. If a tree is removed from the Common Area, the Board shall, in its sole discretion decide whether to plant a new tree and the type of any new tree.
- (b) The Association shall have the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject only to the obligation to get approvals for material alterations to the Condominium Development). The Association shall do all such other and further acts that the Board of

Trustees deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration.

- 4.3 **Owner Approval for Certain Improvements.** Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (a) Any improvement (repair, replacement, modification, or upgrade) to the Condominium Development that does not materially alter the Condominium Development may be authorized by the Board of Trustees alone.
 - (b) A material alteration to the Condominium Development is the installation of a previously non-existent and materially significant, permanent improvement, fixture or structure (“Improvement”) or the permanent removal of a materially significant Improvement in the Common Area or Limited Common Area, such as a swimming pool or parking area. Landscaping alterations, general remodeling, repurposing Common Area spaces such as those within the pool house, pool area or on the grounds, updating of existing fixtures and equipment such as boilers, electrical systems, plumbing equipment, appliances, lighting and equipment and the addition or removal of foliage, trees, signs or small structures are not material alterations to the Condominium Development
 - (c) Regardless of its cost, construction or removal of any Improvement, as defined in subsection (b) above, at the Condominium Development must be authorized, prior to commencement of the work, by the Board of Trustees and by the vote of Owners holding at least fifty percent (50%) of the Undivided Interests at a meeting called for that purpose.
- 4.4 **Standard of Maintenance.** The Board of Trustees shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area and Limited Common Area, so long as those areas are maintained in a safe condition and in the best interests of the Owners.
- 4.5 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain or clean a Unit or Limited Common Area as required in the Governing Documents; or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board of Trustees to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Condominium Development, then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board of Trustees determines to be required and requesting that the same be carried out within a period of at least thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Board of Trustees may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.
- 4.6 **Landscape Maintenance.** Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, or other plantings in the Common Area without the written approval of the Board of Trustees. The Association may adopt Rules further identifying the Owner’s landscaping privileges and maintenance responsibilities for the Limited Common Areas appurtenant to his/her/its Unit and in adjacent Common Areas.
- 4.7 **Remodeling, Maintenance, and Repair of Units.**

- (a) An Owner may complete any maintenance or upgrades to the interior of a Unit that may not otherwise be defined as remodeling, without prior approval of the Association.
- (b) The Association may define, regulate and restrict remodeling of a Unit within the Condominium Development by adopting Rules for that purpose and by any other means deemed reasonable by the Association.

4.8 **Utilities.** Except those utility costs that are metered or charged collectively and paid by the Association as a Common Expense item, all utilities for individual Units will be metered and charged separately to each Unit and such utility charges shall be the responsibility of the Unit Owner.

4.9 **Association Responsibility for Certain Limited Common Area Features.** Nothing in this Declaration to the contrary withstanding, the Association has the duty to maintain, repair and, as the need arises, replace the covering over the assigned covered parking stall and the decks appurtenant to each Unit, which “Features” are contained in and defined as part of the Limited Common Area. Certain of the Unit decks have been repaired, replaced and modified by the Association and/or by the Owner through the date of the recording of this Declaration. If a given deck has already been repaired by the Association or modified by the Owner, the Association is no longer responsible to repair, replace or modify that deck. If and when each additional deck is repaired, replaced or modified by the Association or an Owner from and after the date of the recording of this Declaration, the Association shall thereafter have no further obligation to repair, replace or modify that deck again and the same shall be the responsibility of the Owner. To the extent either of these Features are damaged by the Owner of the Unit to which they are appertaining, or by an occupant of the Owner’s Unit; the Owner and occupant will be jointly and severally responsible for the cost incurred to remedy the damage caused.

**ARTICLE 5:
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.

5.2 **Modifying or Changing the Name of the Condominium Development.** The name of the Condominium Development may be modified or changed pursuant to a lawful amendment to this Declaration.

5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents 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 consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner

succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

- 5.5 **Availability of Documents.** The Association shall make available to the Owners, 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 that are required to be kept by law and this Declaration. The term “available” as used in this Article shall mean available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper request, during normal business hours and under other reasonable conditions. The Association has the right to refuse to disclose information that the Board of Trustees determines, in good faith, would reveal sensitive personal health or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, social security numbers, health information or any communication or document subject to the attorney–client privilege. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information. However, the Association shall comply with any applicable legal requirements contrary to any provision in this Article 5.5.
- 5.6 **Board of Trustees.** The governing body of the Association shall be the Board of Trustees elected and removed as provided in the Bylaws. The Board of Trustees shall consist of five (5) members, who serve for the terms determined by the Board of Trustees or as may be set forth elsewhere in the Articles or Bylaws of the Association. Except as otherwise provided in this Declaration or the Governing Documents, the Board of Trustees 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 Board of Trustees. Except as may be specifically provided in the Governing Documents, or by applicable law, no Owner or group of Owners other than the Board of Trustees may direct the actions of the Association.
- 5.7 **Board of Trustees Member Requirements.** The Bylaws shall set forth the qualifications for serving as a Member of the Board of Trustees and may place reasonable obligations and requirements on existing Board of Trustees Members to retain their membership on the Board of Trustees, such as a requirement that a Board of Trustees Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board of Trustees Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board of Trustees Members.
- 5.8 **Limitation on Authority of Owners, Board of Trustees Members, Officers, & Committee.**
- (a) Except as otherwise provided herein or in the Bylaws, the Board of Trustees, any individual Owner, and any individual Board of Trustees Member or Officer shall have no authority to and may not act on behalf of the Association or the Board of Trustees to:
- (1) Amend or terminate any Governing Document;

- (2) Elect or remove members of the Board of Trustees or Officers;
- (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board of Trustees Members, the Board of Trustees or Officers; or
- (4) Authorize or agree to any deviation or exception from the Terms and Conditions of the Governing Documents.

5.9 **Registration with the State.** In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

**ARTICLE 6:
GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

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

- (a) Paying Expenses. The Association shall provide for the payment of Association expenses.
- (b) Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Condominium Development consistent with the requirements of the Governing Documents and the Act, as the same may be altered and amended from time to time by the Board of Trustees and the Utah Legislature, and under the “Equal Assessment” formula set forth above in Article 3.3.
- (c) Entering Units. After having given the appropriate notice as provided for in Article 17 of this Declaration, the Association shall have the right, in the sole discretion of the Board of Trustees, at all times upon reasonable notice (and at any time in case of an emergency) to enter into any Unit or the Limited Common Areas appurtenant to any Unit to abate any infractions or correct any violation of any of the Terms and Conditions, to make repairs, or to abate any condition that threatens the health or property of any Owner or Occupant.
- (d) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Condominium Development. If Rules are adopted, they shall be consistently and uniformly enforced. Unless precluded by law, the Rules may address any issues 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 Board’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 any timely judicial determination. The standard for adopting Rules is reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue the Rule addresses.
- (e) Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Board of Trustees in the management and operation of the Condominium Development 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 Board of Trustees shall have the right to approve Association budgets, fines

to Owners, and general and special Assessments. The Board of Trustees may revoke at any time, with or without cause, any powers and duties delegated to any Manager or other Person. The terms of any management agreement between the Association and a Manager must provide that: 1) the Association may terminate the agreement without penalty and with or without cause upon thirty (30) days' notice; and, 2) the financial accounts and records maintained by the Manager are done so for the benefit of and belong to the Association, and must be surrendered and assigned to the Association or its new Manager upon termination of any Manager regardless of the reason for termination. The Board of Trustees may not enter into any agreement or contract for management of the Association or the Condominium Development inconsistent with the terms of the Governing Documents or that allows for a termination fee or requires termination for cause or that gives up ownership or control of the Association's financial, accounting or any other records to a manager.

- (f) 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 Owners' rights to receive utility services paid as a Common Expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; (4) terminate Owners' and their Units' respective Occupant rights and access to Common Areas and Facilities; and, (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (g) Uniform Enforcement. The Board of Trustees shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (h) Capital Reserve Fund. The Association shall establish a capital reserve fund and obtain and update a Reserve Analysis as required in this Declaration and the Act.
- (i) Preventing Conflicts with Service Providers and Vendors. Unless the Board of Trustees specifically authorizes it as documented in the minutes of the Association after full disclosure of all aspects of the potential conflict, the Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Board of Trustees Member; (2) any business or entity in which any Board of Trustees Member; or (3) any business, entity, or Person with any familial or financial relationship with any Board of Trustees Member.
- (j) Establishing Hearing Procedures. The Board of Trustees shall have the authority to adopt and promulgate procedural rules for when the Association takes any adverse action regarding an Owner or group of Owners consistent with the Governing Documents and as required by law.
- (k) Annual Meeting. The Board of Trustees shall arrange for and conduct an annual meeting 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 law.
- (l) Bulk Services Agreements. As the Board of Trustees deems appropriate, the Association shall have the right to enter into agreements for the provision of cable, television, internet, telephone, solar or other similar services for all of the Units. Such services shall

be assessed to the Owners pursuant to the provisions of this Declaration and may be broken out as a separate line item on invoices, statements, or notices of Assessment.

- (m) Review and Audit of Association Finances. The Association may have an independent accountant conduct a review of the Association's finances. The Association shall make any such review available to the Owners. Any Owner may have an audit or review conducted of the Association's records by a CPA, at that Owner's expense, and the Association shall cooperate in providing access to records it keeps as may be needed for that audit or review. Upon receipt of a request signed by owners holding twenty percent (20%) of the Undivided Interests, the Board of Trustees shall have an audit conducted of the Association's finances by a CPA and shall make the audit available to the Owners.
- (n) Easements, Maintenance, and Use Rights. The Association, through the Board of Trustees, shall have the right to grant easements, rights-of-way, and use rights upon or through the Common Areas, and to enter agreements to maintain property outside of the Condominium Development if such maintenance shall, in the Board's discretion, provide a benefit to the Association or the Owners.
- (o) Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

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 Condominium Development; enhancing the quality of life of the Owners in the Condominium Development; enhancing and preserving the value of the Condominium Development and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.
- 7.2 **Budget and Regular Assessment.**
 - (a) The Board of Trustees is authorized and required to prepare and adopt a budget annually. The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar 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 Board of Trustees deems appropriate.
 - (b) The budget prepared and adopted by the Board of Trustees for the following year shall be presented to the Owners at the annual meeting.
 - (c) The Board of Trustees shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Undivided Interests for each Unit.
- 7.3 **Payment of Regular Assessments.** Unless otherwise established by the Board of Trustees and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.

- 7.4 **Adjustments to Regular Assessments.** In the event the Board of Trustees 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 Owner's share of the new budget total based on the Owner's Undivided Interest. Upon notice of the adjustment, and unless modified by the Board of Trustees, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 7.5 **Personal Obligation for Assessment.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an 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 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 Owner became an Owner. Each such Assessment, together with any interest, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment is assessed.
- 7.6 **Improvements.** Expenses for improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner the Board of Trustees determines.
- 7.7 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Special Assessments to individual Units) shall be allocated to Owners equally based on their respective Undivided Interest.
- 7.8 **Rules Regarding Billing and Collection Procedures.** The Board of Trustees may 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 an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.9 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. The Association may set forth in the Rules the amount of the fee that the Association will charge for providing such statement; however, any such fee may not exceed the amount of twenty-five dollars (\$25.00). For any valid, request, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit. The Association may set forth the amount of the fee in the Rules up to the maintenance amount allowed by law. Unless otherwise determined by the Association in its Rules or as otherwise set forth in the Act, such fee shall be fifty dollars (\$50.00). Within five (5) business days of any complete payoff information request, the Association shall provide Assessment

payoff information needed for the closing. A request for payoff information needed for a closing must: (a) be conveyed in writing; (b) be conveyed to the primary contact person designated by the Association with the Association's registration with the Utah Department of Commerce; (c) contain: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; (d) be accompanied by a written consent for the release of the payoff information: (1) identifying the person requesting the information as a person to whom the payoff information may be released; and (2) signed and dated by an Owner of the Unit for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.

- 7.11 **General 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 payable as may be determined by the Board of Trustees to pay for any Common Expenses or Capital Improvement. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that any payment for the special Assessment is due.
- 7.12 **Individual Special Assessments to Individual Units.** Special Assessments may be assessed by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
 - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit if such cost is the responsibility of the Owner as provided for in this Declaration;
 - (c) Subject to the provisions in this Declaration related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by the fault or negligence of an Owner or an Occupant, the Association may assess the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance;
 - (d) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
 - (e) Fines, late fees, collection charges, and interest; and
 - (f) Attorney fees, costs, and other professional expenses relating to any of the above.
- 7.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required for the maintenance of the Condominium Development, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Unit, at the Board's discretion.
- 7.14 **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 Board of Trustees in its sole discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves or take other action with the funds permitted under this Declaration, as the Board of Trustees deems appropriate. The decision

of the Board of Trustees 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.

- 7.15 **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 Board of Trustees 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.
- 7.16 **Application of Payments.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.17 **Administration of Assessment Funds.** The Association shall keep all Assessment-generated funds in an account, or accounts, in the name of the Association. The Association shall not commingle Assessment-generated funds with the personal funds of any other Person.
- 7.18 **Reinvestment Covenant upon Sale or Transfer of Unit.** The Board of Trustees may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a “**Reinvestment Fee**”) as provided for in Utah Code Ann. § 57-1-46. The Board of Trustees may set the amount of the Reinvestment Fee and change that Fee from time to time by Rule, however, the Fee shall not exceed one-half of one percent (0.5%) of the value of the Unit at the time of the transfer. The Reinvestment Fee shall be due within thirty (30) days after the effective date of the deed or similar instrument transferring title. The Reinvestment Fee shall constitute an Assessment against the Unit in accordance with the Declaration. A transfer is any change in the ownership of the Unit as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Unit or not. The value of the Unit for purposes of this Article shall be the higher of: (a) the value of the Unit as determined by the property tax assessor on the date of the transfer of title, (b) the purchase price paid for the Unit related to the transfer, or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board of Trustees) and paid for by the Association using an appraiser selected by the transferee of the property from a list of ten appraisers selected by the Association.
- (a) Purpose of the Reinvestment Fee. Once collected, the Reinvestment Fee may only be used by the Association to pay costs directly related to the transfer of the burdened property, for other Association expenses or as otherwise allowed by law.
- (b) Limitation on Reinvestment Fee. The Reinvestment Fee is not due and may not be enforced against an involuntary transfer; a transfer that results from Court order; 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; a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed two hundred and fifty dollars (\$250.00); or, if expressly provided in the Rules at the Board’s sole discretion, a transfer

to an inter-vivos trust in which an Owner is a grantor and title to the Unit after the transfer is held by the trustee of that inter-vivos trust; provided, however, that if this exception is not expressly provided in the Rules, however, a transfer to an inter-vivos trust is subject to the Reinvestment Fee the same as any other transfer not excepted by this Declaration or Utah law from imposition of the Reinvestment Fee.

(c) Additional Actions.

- (1) The Association shall have the authority to record any notice required by law to effectuate this provision and must do so before it can require the payment of such.
- (2) The Association shall have the authority to enact Rules that may include: (i) exceptions to the imposition of a Reinvestment Fee, including, but not limited to, for an Owner's transfer of a Unit to an inter vivos trust; (ii) requirements for Owners to provide sales and transfer documents; (iii) requirements for the timing of responses to requests such as the selection of the appraiser; (iv) default provisions if no selection is made such as allowing the Association to select the appraiser; and (v) other procedural requirements and Rules as the Board of Trustees deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

ARTICLE 8:

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY

- 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Trustees may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 **Collection Charges and Interest.** The Association may adopt or establish billing and collection procedures, including the amount of late fees and interest, in the Rules or by resolution and as allowed for by law.
- 8.3 **Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that 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 Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Unit.
- 8.4 **Lien.** The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, fines, attorney 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 arose and was perfected as of the date of the recording of the Enabling Declaration and has priority over all encumbrances recorded after the Enabling Declaration was recorded, except as otherwise required by law. Through the recording of this Declaration, such lien remains in place and is perfected and shall continue to have priority over all encumbrances recorded after the Enabling Declaration was 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 Unit except only: (a) a lien or encumbrance recorded before the Enabling Declaration was recorded; (b) a first or second security interest on the 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 (c) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a 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 attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney 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 Ann. Articles 57-1-20 and 57-8-44 to -53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to Richard M. Matheson, 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 **Association Lien Not Subject to Homestead Exemption.** Pursuant to Utah Code § 57-8-44(5), any lien of the Association arising under Article 44 of the Act is not subject to any Owner's homestead exemption, and each Owner hereby waives any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter that relate to the Association's lien arising under the Act and this Declaration.
- 8.8 **Termination or Suspension of Delinquent Owner's Rights.** Pursuant to Utah Code § 57-8-52, the Association may terminate, or suspend, a delinquent Owner's: (a) rights to receive a utility service for which the Owner pays a Common Expense; and (b) access to certain Common Areas and recreational facilities. The Association may further suspend a delinquent Owner's right to vote in regard to any Association matter. Before terminating any delinquent Owner's rights under this provision, the Association shall give the delinquent Owner notice in accordance with Article 17 of this Declaration. The notice shall also include any specific provisions required by the Act and give the delinquent Owner the right to request an informal hearing with the Board prior to the Association terminating or suspending the delinquent Owner's rights.
- 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 Unit for which an Assessment is more than sixty (60) days late. Any tenant who fails to pay such rent when demanded shall be liable to the Association for the amount of any unpaid rent and all collection costs and reasonable attorney fees related to the failure to pay as provided for in Article 8.10 and regardless of whether an action is commenced or not.

- 8.10 **Attorney Fees Incurred as a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit the 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 Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the 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 agree not to make any claim against the Association for nonpayment of taxes, assessments, or other costs and fees associated with any Unit if the Association takes title to a 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 limitations in the Governing Documents, each Owner shall have an Undivided Interest in, and easement of use and enjoyment in and to, the Common Areas for the purposes for which they were intended. Such use cannot hinder or encroach upon the lawful rights of the other Owners and may not extend into the Limited Common Area reserved for the use of an Owner of another Unit. 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 Common Area, subject to any other restrictions related to such use. 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 Common Area as an Owner. All such rights shall be subject to any Rules established by the Board of Trustees.

(b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Unit that the Association is responsible for maintaining which are accessible from such 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 Common Area for purposes necessary for the proper operation of the Condominium Development.

- 9.2 **Sale, Conveyance, Lease, or Hypothecation of Common Area.** To the extent permitted by law and with the consent of Owners holding fifty-one percent (51%) of the Undivided Interests present at a meeting called for that purpose, the Association may, sell, convey, lease, or hypothecate Common Area.
- 9.3 **Public Utilities.** Easements and rights-of-way over the Condominium Development for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board of Trustees to be helpful in serving the Condominium Development, Units, or Unit Owners in the Condominium Development are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.
- 9.4 **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 Building(s) is 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.

- 9.5 **Limitation on Easement; Suspension of Owner's Rights.** An Owner's Undivided Interest and right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to suspend the Owner's or Occupant's right to the use and/or access to Common Areas and any recreational facilities included in the Common Area: (1) for any period during which an Assessment on such Owner's Unit remains unpaid; (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Rule; and (3) 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 Owner who at any given time are permitted to use the Common Area;
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Condominium Development to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services;
 - (d) The right of the Association to reasonably limit or restrict Owner's access and use of certain portions of the Common Area set aside for the functioning of the Association; and
 - (e) Any Rule adopted by the Board allowing for an Owner or Occupant to rent a particular part of the Common Area, such as the pool, clubhouse, etc., for a limited time period, and in which instance the Owner or Occupant renting the specific Common Area may restrict access to the Common Area by other Owners, Occupants, and Persons as allowed under the Rules.
- 9.6 **Views.** Views from a Unit and the Condominium Development are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Development and each Owner and Occupant acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Condominium Development.

**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 Condominium Development is maintained and used in a manner consistent with the interests of the Owners.
- 10.2 **Signs.** The Association does not allow signs of any kind in, on or around the Unit visible from the outside of the Unit or anywhere else in the Condominium Project except as may be authorized, restricted and regulated by the Board of Trustees pursuant to the Rules and to the extent permitted by law. The term "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; Except that the following may be allowed subject to further regulation as set forth in the Rules:

- (a) Signs expressly approved in advance by the Board of Trustees;
- (b) One “welcome sign” or wreath on the Unit’s front door or when used as a door mat; and
- (c) Signs allowed under applicable state and federal laws, including an American flag displayed in the Unit or Limited Common Area in accordance with the federal Freedom to Display the American Flag Act of 2005 and Utah’s Display of Flag Act (Utah Code § 57-24-101 *et seq.*). Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.

- 10.3 **Nuisance.** No noxious or offensive activity shall be conducted in the Condominium Development, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Development in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body and engaging in such may also be deemed a nuisance and subject the Owner to separate or additional fines from those assessed for the conduct itself.
- 10.4 **Smoking.** Smoking is prohibited within the following areas in the Condominium Development: all Units, all Limited Common Areas, the clubhouse, swimming pool, playground area, barbeque and picnic areas, and within twenty-five (25) feet of any and all Buildings, the clubhouse, swimming pool, playground area, mailboxes, and barbeque and picnic areas. It shall be a nuisance and prohibited to permit or cause any smoke to drift or otherwise enter into any Unit or the Limited Common Area of any Unit. The Association may further regulate smoking in the Condominium Development by Rule. The Association relies upon the definitions of the terms “e-cigarette” and “smoking” as used in the Utah Indoor Clean Air Act (Utah Code Ann. §§ 26-38-1 *et seq.*) in defining such terms for this Article 10.4.
- 10.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Development or used therein unless otherwise authorized in this Declaration or approved by the Board of Trustees.
- 10.6 **Parking.** The Association has authority to regulate parking anywhere in the Condominium Development and shall promulgate reasonable rules to govern parking.
- 10.7 **Air Space, Drones, and Unmanned Aircraft.** The Association shall the authority to regulate by Rule or to ban any use and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property.
- 10.8 **Electric Cars and Charging Stations.** The Association has authority to regulate and impose limitations by Rule on the installation of charging stations and the charging of electric vehicles in the Association as allowed by law. All costs associated with an electric vehicle charging station, if allowed and per regulations imposed, shall be the responsibility of the Owner and shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.

- 10.9 **Holiday Decorations.** The Association may define, regulate and restrict, by Rule, holiday decorations in the Condominium Development, to the extent permitted by law. Unless and until the Board of Trustees adopts Rules regulating holiday decorations, holiday decorations are not permitted.
- 10.10 **Items in Common Area in Front of Unit Doors.** The Board of Trustees may adopt Rules allowing or not allowing Owners to place small items in the Common Area immediately in front of such Owner's Unit including, but not limited to, vases, flowers, small pictures, other artwork, floor mats, wreaths, or other decorations. Unless and until the Board of Trustees adopts such Rules or unless otherwise allowed under the Declaration, Owners may place any such small items in the Common Area hallway or doorstep in front of their Unit.
- 10.11 **Common and Limited Common Area Use Restrictions.** Unless otherwise permitted in the Rules, external laundering and drying of clothing, arts and crafts, assembling of equipment and products of any kind and all other similar activities are prohibited and no radio, stereo or television broadcast, loudspeaker, or development of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.12 **Animals.** The Condominium Development is a "Pet Free" Association. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or anywhere within the Condominium Development, except for "Service Dogs" and "Comfort Animals" as allowed for and defined by law and provided the Owner or Occupant has complied with all applicable laws and the Association's Rules governing the application for and permitting and keeping of the same. The Board of Trustees may adopt Rules applicable to the provisions of this Article 10.12, including procedures for qualifying and registering service dogs and comfort animals
- 10.13 **Residential Occupancy.** No Unit may be used for any purpose other than a residential purpose.
- (a) No trade or business may be conducted in or from any 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 Condominium Development and the business activity;
 - (3) the business activity does not involve Persons coming onto the Condominium Development who do not reside in the Condominium Development or solicitation of Occupants or Owners of the Condominium Development;
 - (4) the business activity is consistent with the residential character of the Condominium Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Condominium Development;
 - (5) the business activity is disclosed to the Board of Trustees 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, and a description of any impact on the Condominium Development;

- (6) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
- (7) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (8) all Owners and Occupants of the Unit reside in the Unit in which the business activity is conducted for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the Unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
- (9) the Board's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely as often as the Board of Trustees shall determine in its discretion.

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

(c) No Unit may be used as a "model unit" or for the operation of the business of renting or selling ownership or rental of any Unit or space of any kind located within or without the Condominium Development.

- 10.14 **No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.** No Unit shall be split, subdivided, separated or timeshared into two (2) or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a 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 Unit or the Condominium Development shall be recorded on the Condominium Development unless the Board of Trustees and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Article shall be null, void, and of no legal effect.
- 10.15 **Firearms.** The discharge of firearms within the Condominium Development is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paintball guns, air soft guns, and other firearms of all types, regardless of size.
- 10.16 **Garage Sales.** Garage sales, estate sales, rummage sales, or similar sales will not be permitted unless pre-approved by the Board of Trustees. The Board of Trustees may adopt Rules governing such sales.
- 10.17 **Lighting and Security Fixtures.** Permanent or temporary lighting or security fixtures, including deck lighting and cameras, outside of Units shall be allowed only to the extent approved by the Board of Trustees by Rules adopted for that purpose.
- 10.18 **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. Trash and garbage shall be properly and promptly disposed of as provided for in the Rules.

- 10.19 **Dumpster.** Only Owners and Occupants may place items in the dumpsters. The Board of Trustees may adopt Rules regulating Owners and Occupants' use of the dumpsters, including, but not limited to, what items may be placed in dumpsters.
- 10.20 **Variations.** The Board of Trustees may, at its option and in extenuating circumstances, grant variations from the Terms and Conditions set forth in this Article 10 if the Board of Trustees determines in its discretion (by unanimous vote): (a) either (1) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (2) 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 effect or any other substantial adverse effect on the Owners or Occupants of the Development and is consistent with the high quality of life intended for residents of the Condominium Development. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Trustees.
- 10.21 **Hazardous Substances.**
- (a) The Owners and Occupants 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 Condominium Development, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners and Occupants shall not do, nor allow anyone else to do, anything affecting the Condominium Development that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Condominium Development of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Condominium Development.
 - (b) Each Owner and Occupant shall indemnify from all liabilities and losses and defend the Association and each and every other Owner and Occupant 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 Condominium Development, which the Association or the other Owners or Occupants may incur due to the actions or omissions of an indemnifying Owner or Occupant. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Development. The obligations of each Owner and Occupant under this Article 10.26 shall survive any subsequent transfers of the Unit (voluntary or otherwise).
 - (c) As used in this Article, "Hazardous Substances" are those substances defined as a toxic or hazardous substance 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 Article, “Environmental Law” means federal laws and laws of the jurisdiction where the Condominium Development is located that relate to health, safety, or environmental protection.

ARTICLE 11: INSURANCE

11.1 **Insurance Requirement.** The Association 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. **Annual Insurance Report.** The Association may 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 community association insurance industry, setting forth: (a) 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; (b) 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; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION”; and (d) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous 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 Developments. If obtained, 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. The report will be distributed to Owners at the annual meeting and posted on the Association website. A copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the annual meeting.

11.2 **Property Insurance.**

(a) **Hazard Insurance.**

(1) **Blanket Policy of Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Condominium Development, including the Common Area and all Buildings including all Units, fixtures, and Building service equipment.

(i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance

industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
 - (iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
 - (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
 - (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (A) “Inflation Guard Endorsement,” if available; (B) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (C) “Equipment Breakdown,” if the Condominium Development has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (1) The Association’s policy provides primary insurance coverage;
 - (2) Notwithstanding Sub-Article 11.2(b)(1) and subject to Sub-Article 11.2(b)(3):
 - (i) the Owner is responsible for the Association’s policy deductible; and

- (ii) building property coverage, often referred to as Coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (3) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.
 - (i) If an Owner does not pay the amount required under Sub-Article 11.2(b)(3) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an Assessment against the Owner for that amount.
 - (ii) As used in this Sub-Article (3):
 - (A) "**Covered Loss**" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
 - (B) "**Unit Damage**" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.
 - (C) "**Unit Damage Percentage**" means the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage.
- (c) Flood Insurance.
 - (1) If any part of the Condominium Development is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Condominium Development or, at a minimum, that portion of the Condominium Development located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a Building and all Common Area within the Condominium Development ("Insurable Property") in an amount deemed appropriate and reasonable in relation to what insurance is available at an affordable cost.
 - (2) If the Condominium Development is not situated in a Special Flood Hazard Area, the Association may nonetheless, at the discretion of the Board of Trustees, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association may purchase earthquake insurance as the Board of Trustees deems appropriate. If the Board of Trustees elects not to purchase earthquake insurance, the Owners may call a special meeting for the purpose of voting on whether the Association should purchase earthquake insurance. A vote of Owners holding at least fifty-one percent (51%) of the of the Undivided Interests of the Association must vote in favor of purchasing earthquake insurance to override the Board's prior decision. If the

Owners at the meeting vote to purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote.

- (e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall set aside the amount of the property insurance deductible. The Association may keep those funds in a segregated bank account or financial account (such as the purchase of a certificate of deposit) in an amount equal to the Association's property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less, unless some other amount is required by law – which shall be complied with. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) Association's Right to Not Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Board of Trustees determines that a covered loss 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 insurer: (1) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (2) the Association is responsible for any loss to any Common Area; (3) 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 Article 11.2(b)(3)(i), recover any payments the Association makes to remediate that Unit; and (4) the Association need not tender the claim to the Association's insurer.
- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Sub-Article 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 case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

11.3 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall be determined by the Board of Trustees but shall not be less than one million dollars (\$1,000,000.00) 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.

11.4 **Director's and Officer's Insurance.** The Association may obtain Directors' and Officers' liability insurance protecting the Board of Trustees, the officers, members of committees formed by the Board of Trustees, 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). To the extent reasonably available,

this policy shall: (a) include coverage for volunteers and employees, (b) include coverage for monetary and non-monetary claims, and (c) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims. At the discretion of the Board of Trustees, 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.

- 11.5 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association may obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three (3) months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (1) Officers and Board of Trustees Members of the Association (2) employees and volunteers of the Association, (3) any Manager of the Association, and (4) officers, directors, and employees of any Manager of the Association.
- 11.6 **Workers' Compensation Insurance.** The Association may 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 may purchase workers compensation insurance even if the Association has no employees, as the Board of Trustees deems appropriate.
- 11.7 **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.
- 11.8 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies and the policy of insurance may also name other insureds, such as the Manager, as additional named insureds, at the discretion of the Board of Trustees.
- 11.9 **Right to Negotiate All Claims and Losses and Receive Proceeds.** The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after paying for any necessary action related to the property shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of

liability; and the execution of all documents and 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.

- 11.10 **Insurance Trustee.** At the discretion of the Board of Trustees or upon written request executed by Owners holding fifty percent (50%) or more of the Undivided Interests, the Board of Trustees shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Board of Trustees (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.11 **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 to terminate an insurance policy, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.12 **Waiver of Subrogation against Owners and the 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 agents and employees.
- 11.13 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.14 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Utah Code Ann. § 57-8-43, and any amendments thereto and hereafter 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 the Building, the Association shall promptly take the following actions:
- (a) 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. If the Board of Trustees in good faith determines that none of the bids submitted under this Article reasonably reflect the anticipated reconstruction costs, the Board of Trustees shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board of Trustees as soon as possible.
 - (b) The Board of Trustees, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any, or establish a procedure by which any insurance proceeds shall be available for either a cash payment or for reconstruction.

- (c) Engage the services of a reputable licensed architect to advise and consult with the Board of Trustees or any Insurance Trustee on all actions and decisions necessary under this Article.
- (d) If an appraisal of any or all Units is required under this Article, the Board of Trustees shall select the appraiser and any appraisal relied upon by the Board of Trustees shall be final and not subject to challenge by any Owner for purposes of this Article.

12.2 **Insurance Proceeds Sufficient for Reconstruction.** In case of fire or any other disaster and if insurance proceeds are sufficient to reconstruct the Building and all Units suffering damage therein, then the insurance proceeds shall be applied to reconstruct the Building and any Units suffering damage. As used herein, reconstructing the Building shall mean restoring the Building and Units to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before.

12.3 **Insurance Proceeds Insufficient for Reconstruction.** If insurance proceeds will be insufficient for reconstruction, the following shall apply:

- (a) If the cost of reconstruction is equal to or less than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Development (prior to the damage and destruction), then the Association shall proceed forward with reconstruction applying any insurance proceeds as provided for in Article 12.2. The cost of reconstruction in excess of insurance proceeds and reserves shall be a Common Expense.
- (b) If the cost of reconstruction is greater than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Development (prior to the damage and destruction), then the Board of Trustees shall call a special meeting of the Owners for the purpose of voting on whether to reconstruct or not.
 - (1) Unless Owners holding seventy-five percent (75%) or more of the Undivided Interests vote to not proceed with reconstruction at such meeting, the Association shall proceed with reconstruction as provided for in Article 12.3(a).
 - (2) If, however, the Owners, by a vote at such meeting of not less than seventy-five percent (75%) of the Undivided Interests, decide not to proceed with such reconstruction:
 - (i) The Property shall be deemed to be owned in common by the Unit Owners;
 - (ii) The Undivided Interest in the Property owned in common which shall appertain to each Owner shall be the Owners' Undivided Interest as determined in this Declaration;
 - (iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the Undivided Interest of the Owners in the Property; and
 - (iv) The Property shall be subject to an action for partition at the suit of any

Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of the Undivided Interest owned by each Owner in the Property, after first paying out of the respective shares of each Owner, to the extent sufficient, all liens on the Undivided Interest in the Property owned by each Owner.

**ARTICLE 13:
EMINENT DOMAIN**

- 13.1 **Total Taking of a Unit.** If 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 Undivided 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 Undivided Interest in the Common Area will 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 Article. Any remnant of a Unit remaining after part of a Unit is taken becomes part of the Common Area.
- 13.2 **Partial Taking of a Unit.** Except as provided in Article 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 Undivided 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 Undivided Interest in the Common Area will remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount will automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.
- 13.3 **Taking of Limited Common Area.** If the portion of the Condominium Development 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 will be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Condominium Development taken by eminent domain, or sold under threat thereof, is not comprised of or does not include any Unit or Limited Common Area, the Board of Trustees shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Condominium Development adjacent to the taking, and the portion of the award not used for restoration will be added to the general funds of the Association.
- 13.5 **Taking of Entire Condominium Development.** In the event the Condominium Development, in its entirety, is taken by eminent domain, or sold under threat thereof, the Condominium Development is terminated, and the provisions related thereto in this Declaration will 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. If the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds will 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, is irrevocable, and binds any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14:

TERMINATION OF CONDOMINIUM DEVELOPMENT OR SALE OF PROPERTY

- 14.1 **Required Vote.** The Condominium Development may be removed from the provisions of the Act, terminated, and/or sold by approval of Owners holding at least sixty-seven percent (67%) of the Undivided Interests or as otherwise provided in Article 13 and in compliance with any other applicable laws.
- 14.2 **Sale of Condominium Development Following Termination.** A termination agreement may provide that the entire Condominium Development shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Development is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.3 **Sale of Condominium Development Without Termination.** Pursuant to and as provided for in the Act, the Unit Owners may, by an affirmative vote of sixty-seven percent (67%) of such Unit Owners, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the Property either in conjunction with the termination of the Condominium Development or not. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts in manner and form necessary to affect the sale.
- 14.4 **Sale Agreement.** An agreement to sell the Condominium Development must be evidenced by the execution or ratification of a sale agreement, in the same manner as a deed, by the requisite number of Owners. The sale agreement must specify a date after which the agreement will be void unless it is recorded before that date. A sale agreement, including all ratifications of such termination agreement, becomes effective when it is recorded in the records of the County Recorder in Salt Lake County, Utah.
- 14.5 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Development on the termination of the Condominium Development or related to the approval of the sale of the Condominium Development pursuant to Articles 14.2 and 14.3. The contract is not binding on the Owners until approved pursuant to the provisions in this Article 14. If any real estate in the Condominium Development is to be sold, immediately upon approval of the sale of the Property by the Owners or the Approval of the Owners of Termination of the Condominium Development, title to that real estate shall immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect 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 notwithstanding any

termination. Unless otherwise specified in a 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.

- 14.6 **Proceeds of Sale.** The proceeds of any sale of real estate or 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 Board of Trustees. If any Owner disputes the appraised amount, the Owner shall notify the Association 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.
- 14.7 **Allocation upon Termination or Sale.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the Condominium Development, 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 must be made payable to the Association, which shall 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 by the affirmative approval of Owners holding Undivided Interests totaling sixty-seven percent (67%) of the total Undivided Interest. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law and the vote may be conducted over time and in any other way reasonably calculated to get as much participation as possible from the Owners. The approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended or restated in whole or in part to add new rights, restrictions, and obligations, or to remove, modify or replace existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other 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 Board of Trustees, 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 to the best of the Board's knowledge. 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.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any Unit or Units upon the affirmative approval of Owners holding Undivided Interests totaling on less than sixty-seven percent (67%) of the total Undivided Interest and any Owner who owns any Unit in which the boundary is directly affected. Any Plat amendment, supplementation, or correction may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Condominium Development. If the Plat amendment is solely to effectuate the approval of a Material Change to the Condominium Development (that has been approved by the number of Owners required in this Declaration), no additional approval shall be required for the amendment of the Plat. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein, or as otherwise provided in this Declaration, is obtained, each and every Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction. The Board of Trustees may, without the approval of the Owners, agree to any boundary agreement on any Common Area boundary of the Association.
- 15.5 **Amendment to Conform to Law.** The Board of Trustees 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 the Department of Veterans Affairs, the Department of Housing and Urban Development or 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 significant experience and a regular practice in area of Community Association law and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Article 15.5;
 - (b) A majority of the members of the Board of Trustees must agree to the Amendment at the time it is recorded;
 - (c) The Board of Trustees must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this Article 15.5 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 (i) notifies the Owner that it intends to amend the Declaration pursuant to this Article 15.5, (ii) provides the Owner a right to object to the amendment within thirty (30) days, and (iii) provides instructions on how, when, and where to properly make the objection. The Board of Trustees may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;

- (d) Within forty-five (45) days after providing Owners the notice and information required by this Article 15.5, unless Owners holding more than thirty percent (30%) of the Undivided Interests have objected to the amendment in a written notice to the Association, the Board of Trustees is authorized to sign and record the amendment; and
- (e) Having otherwise complied with all of the requirements of this Article 15.5, the Board of Trustees Members shall each sign the amendment instrument verifying that this Article 15.5 has been complied with to the best of their knowledge and that Owners holding no more than thirty percent (30%) of the Undivided Interest after having received the notice required in this Article 15.5. The amendment shall be effective upon the recording of the instrument in the office of the County Recorder of Salt Lake County.

- 15.6 **Consent of Two-Thirds Owners to Alter Undivided Interests.** Notwithstanding anything to the contrary herein, the consent of two-thirds (2/3) of the Owners shall be required to alter any Undivided Interest.

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 Articles, the Bylaws, and then the Rules. The Declaration shall take priority over the Plat.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Condominium Development 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 Condominium Development 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 Condominium Development. The article and Article 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 Article numbers, unless otherwise expressly provided, are to the article and Article 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.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Condominium Development unless they are applicable as a matter of law, this Declaration expressly states that such amendments shall be applicable, or the Association makes those amendments applicable by amendment to the Declaration.
- 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.
- 16.10 **Joint and Several Liability.** A Tenant of an Owner is obligated to abide by the Association's Governing Documents to the same extent as the Owner and the Owner and Tenant can be held jointly and severally liable for assessments; violations of the Governing Documents and resulting fines, penalties, attorney's fees and costs of suit; loss of voting and Common Area use privileges, and all other damages incurred by the Association to the fullest extent allowed by the Governing Documents and at law and an Owner who rents his/her/its Unit shall notify and contract with the tenant accordingly.

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 to an Owner from the Association.

- (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 the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Unless otherwise provided by law, such as provided in Utah Code Ann. § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
 - (iii) By Electronic Transmission to an Owner which includes:
 - (A) An email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent, whichever occurs first;
 - (B) 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. Unless otherwise provided by law, any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent, whichever occurs first; or
 - (C) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.
 - (iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (2) Notwithstanding sub-Article (1) of this Article 17.1(a), the Association shall send all notices by U.S. Mail if an Owner, in writing, 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 (2) co-Owners send conflicting notice demands, notice shall be proper and effective if mailed by first-class mail to the Unit.

- (4) In the case of posting a notice on the Unit, when 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 the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (1) In the case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
 - (2) In the case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall:
 - (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (ii) 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 (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
 - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit the Association shall: (i) give notice to the Owner that an entry is required at least two (2) 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, and (F) any other information the Association deems appropriate to include; and (ii) 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 certified or registered mail 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 recorded document evidencing a security interest in a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

- (1) by a written notice delivered personally to the Manager, which shall be effective upon delivery;
- (2) by a written notice placed in the 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 effective when received, or five (5) days after such deposit, whichever occurs first;
- (3) by Electronic Transmission to the Association: (i) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (ii) that is emailed to an e-mail 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 e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first; or
- (4) by facsimile (whether to a machine or to an electronic receiving unit) to the 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 effective when received, or five (5) days after it is sent, whichever occurs first.

**ARTICLE 18:
ATTORNEY FEES AND COSTS**

18.1 Legal Costs Associated with Disputes with Owners.

- (a) Right to Recovery in Lawsuit. In any lawsuit related to the Association or the enforcement of Governing Documents that occurs between an Owner and the Association or between any Owner and any other Owner, the prevailing party shall be entitled to recover all reasonable attorney fees and costs.
- (b) Owners Liable for Fees Incurred in Dispute. If an Owner has failed to comply with the Governing Documents and the Association utilizes legal counsel to enforce any of those provisions after notice to the Owner that it intends to enforce, or after the Owner communicates or demonstrates an intent not to comply with a provision of the Governing Documents, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (c) Costs. The term “costs” as used in this Article 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.
- (d) 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 the

interpretation of a provision of the Governing Documents; or (3) a request of an Owner for direction on the application of a provision of the Governing Documents, the Association incurs legal fees or costs related to the interpretation and application of such provision that: (i) the Association could not establish an initial position on without having incurred the fees and costs; or (ii) results in a material modification to a prior position taken by the Association: then those fees or costs incurred to establish the initial or revised position shall not be assessed to any Owner and instead shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending in which the Owner is a party and the issues arise as part of the lawsuit.

ARTICLE 19: RESERVES

- 19.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Board of Trustees annually, pursuant to the following provisions:
- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Board of Trustees.
 - (b) Amount. In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Board of Trustees determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
 - (c) Owner Veto. Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the Undivided Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
 - (d) 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.
 - (e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts and shall keep all reserve funds in an account, or accounts, in the name of the Association. The Association may elect to prudently invest money held in the reserves fund in a low-risk investment or high-yield saving account. The Board of Trustees may determine by resolution the maximum amount of the reserves that may be invested. The Association may not commingle reserve funds with the funds of any other person.
 - (f) Use of Reserves. Unless a majority of the Owners vote to approve the use of reserve fund money for that purpose, the Board of Trustees may not use reserve fund money for (1) daily maintenance expenses; or (2) any purpose other than the purpose for which the reserve fund was established

- (g) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project useful life of Common and Limited Common Area elements a minimum of thirty (30) years into the future.
- (h) Qualifications for Person Preparing Reserve Analysis. The reserve analysis report shall be prepared by a Person who satisfies the law, who may be a Person or Persons with either the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (i) Disclosure and Approval at Annual Meeting. If required by law, annually, at a special meeting or at the annual meeting of Owners, the Association shall present the most recent reserve analysis and any updates to the reserve analysis and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this Article 19.1(h) and indicate in the minutes any decision relating to funding a reserve fund.
- (j) Summary and Copies of Reserve Analysis. The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**ARTICLE 20:
LEASING AND NON-OWNER OCCUPANCY**

- 20.1 **Declaration and Rules Governing Non-Owner Occupancy**. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Unit shall be governed by this Article 20 and by Rules and procedures adopted as allowed in this Article 20.
- 20.2 **Definitions**. For the purpose of this Article 20:
 - (a) **“Non-Owner Occupied”** means:

- (1) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or
- (2) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone other than the person for whom the entity or trust was created or anyone other than the owners of the entity.
- (b) **"Family Member"** means the parent, sibling, or child of an Owner; or, if the Unit is owned by a trust or entity created for estate planning purposes, if the estate planning trust or entity was created for the estate of the person currently occupying the Unit, or the parent, child, or sibling of the current occupant of the Unit.
- (c) **"Non-Owner Occupant"** means the Person(s) occupying the Non-Owner Occupied Unit.

20.3 **Limitation on Non-Owner Occupancy.** Subject to the provisions in this Article 20, the number of Units permitted to be Non-Owner Occupied within the Association at any one given time is limited to 29 Units. So long as there are less than 29 total Non-Owner Occupied Units within the Condominium Development, any Non-Owner Occupied Unit may be leased provided the conversion of such Non-Owner Occupied Unit will not cause the total number to exceed 29 Non-Owner Occupied Units within the Association and the Unit complies with the provisions of this Article 20 and other applicable and consistent provisions of the Governing Documents and Act. The 29 Unit maximum shall be calculated by including any Units that are permitted to be Non-Owner Occupied pursuant to the exemptions in Article 20.4 and the grandfathering provision in Article 20.5.

20.4 **Units Exempt from the Limitation on Non-Owner Occupied Units.** The following Unit Owners and Units are exempt from the limitation on Non-Owner Occupied Units in this Article 20:

- (a) A Unit Owner in the military for the period of the Unit Owner's deployment;
- (b) A Unit occupied by the Unit Owner's Family Member;
- (c) A Unit Owner whose employer has relocated the Unit Owner for a period of two (2) years or less;
- (d) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity; or
- (e) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of: (1) a current resident of the Unit, or (2) the parent, child, or sibling of the current resident of the Unit.

20.5 **Grandfathered Units.** Units that were Non-Owner Occupied before the date this Enabling Declaration was amended regarding Non-Owner Occupied Units and recorded with the Salt Lake County Recorder, may continue to be Non-Owner Occupied until: an Owner of the Unit occupies the Unit; 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 the Unit is transferred. Upon either of these occurrences, the Unit's qualification for this exception irrevocably terminates.

- (a) For purposes of this Article, a Unit is transferred when one or more of the following occurs: (i) the conveyance, sale, or other transfer of a Unit by deed, as evidenced by the records at the Salt Lake County Recorder; (ii) the granting of a life estate in the Unit; or if the Unit is owned by any type of a business entity then the sale or transfer of more than seventy-five percent (75%) of the business entity's share, stock, membership interest or partnership interest occurs during a twelve month period.

20.6 **Permitted Rules.** The Board of Trustees may adopt Rules requiring:

- (a) Reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, the age of Non-Owner Occupants, vehicles, phone numbers, etc.;
- (b) Reasonable fees related to the administration of leased and Non-Owner Occupied Units, to the extent otherwise allowed by law;
- (c) Limitations on notices and advertisements identifying the Unit as available to be leased; and
- (d) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

20.7 **Required Rules.** The Board of Trustees shall adopt Rules, resolutions, or procedures to: (a) determine and track the number of Non-Owner Occupied Units in the Condominium Development, including those grandfathered under Article 20.5 and exempt under Article 20.4, and (b) ensure consistent administration and enforcement of the restrictions on Non-Owner Occupied Units in this Declaration.

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

- (a) If required in the Rules or requested by the Board of Trustees, 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 Board of Trustees.
- (b) No Owner shall be allowed to lease or rent the Owner's Unit unless and until the Unit has been occupied by the Owner for a period of at least one year; however, if any of the exemptions identified in Article 20.4 apply to the Owner or Unit then the time period of such non-Owner occupancy under the Article 20.4 exemptions shall count towards satisfying the Unit Owner's one-year occupancy's requirement.
- (c) Any lease or agreement for Non-Owner Occupancy must be in writing, must be for an initial term of at least 12 months, and shall provide as a term of the agreement that the resident shall comply with the Association's Governing Documents, 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 Non-Owner Occupant.

- (d) Short-Term Rentals are prohibited. Daily or weekly rentals are prohibited and no Unit may be occupied by a Non-Owner or Owner for transient, short-term (less than 12 months) rentals or a hotel, resort, vacation, or seasonal use of any kind whether for pay or not. This prohibition includes Short-Term Rentals through Airbnb, VRBO, and in similar websites and services. Except as a non-paying guest of an Owner, daily and weekly occupancy by a Non-Owner Occupant is prohibited. Short-Term Rentals as described here are also prohibited by Holladay City ordinance. Violations of this provision therefore also constitute a nuisance which can be separately enforced and fined.
- (e) No Owner may lease individual rooms to separate Persons, or lease less than the Owner's entire Unit.
- (f) Any Owner who shall lease the Owner's Unit shall be responsible for assuring compliance by the Non-Owner Occupant(s) with the Governing Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the Owner's Non-Owner Occupant who is in violation of the Governing Documents within ten (10) days after receipt of written demand to do so from the Board of Trustees, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his Non-Owner Occupant. Neither the Association, the Board of Trustees, nor any Manager shall be liable to the Owner or Non-Owner Occupant for any eviction under this Article that is made in good faith. Any expenses incurred by the Association related to an eviction, including attorney fees, service fees, storage fees, constable or sheriff fees, and costs of suit, shall be charged as an Assessment to such Owner.

20.9 **Exceptions for Exempt Units.** If a Non-Owner Occupied Unit is exempt under Article 20.4(b), (d), or (e) then no written lease or rental agreement between the Owner and the Occupant is required.

20.10 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Unit shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Governing Documents. The Owner and the Non-Owner Occupant, or similarly situated individual, shall be joint 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 Non-Owner Occupant. The Association, the Board of Trustees, the Manager, and any agent of the Association shall not have any liability for any action taken pursuant to this Article 20.10 and the Owner shall indemnify against all losses and liabilities and pay the defense costs of the Association (with the Association's choice of counsel), the Board of Trustees, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Article 20.10.

ARTICLE 21:

RIGHTS OF LENDERS

- 21.1 Notice to Lender.** Each Lender may request to receive the notices provided in this Declaration by written request to the Board of Trustees which request shall set forth the name and address and Unit number for the Unit secured by its mortgage. Only those Lenders requesting notice pursuant to this Article 21.1 shall be entitled to receive the notices required in this Declaration. A Lender requesting notice pursuant to this Article 21.1 is referred to herein as an “Eligible Lender”.
- 21.2 Books and Records.** A Lender shall have the right to examine the books and records of the Association. A Lender may also require annual financial statement of the Association be made available to it within one hundred twenty (120) days after the end of the Association’s fiscal year.
- 21.3 Damage or Condemnation.** A Lender shall be entitled to notice of any condemnation of or damage to a material part of the Unit to which its mortgage pertains or to the Condominium Development. No Unit Owner or other party shall be entitled to priority over a Lender as to the distribution to such Unit of any insurance proceeds or condemnation award.
- 21.4 Notice of Default, Lapse, or Action.** Each Eligible Lender is entitled to written notification from the Board of Trustees of any default by the Owner of the Unit to which its mortgage pertains in the performance of any obligation under the Declaration which is not cured within sixty (60) days of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and of any proposed action which requires the consent of a specified percentage of Eligible Lenders.
- 21.5 Consent of Lenders.** Unless at least fifty-one percent (51%) of Eligible Lenders consent in writing or by operation of law, pursuant to the Act, neither the Board of Trustees nor the Association shall be entitled to do any of the following by either action or inaction:
- (a) Seek to abandon or terminate the Condominium Development, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of condemnation or eminent domain;
 - (b) Make a material amendment to this Declaration which would change the equal, undivided ownership interest appurtenant to a Unit for the purposes of levying assessments or charges, the allocation or distribution of hazard insurance proceeds or condemnation awards, the Rate of Assessment, or the Undivided Interest of the Unit Owners in the Common Area;
 - (c) Seek to partition, subdivide, encumber, sell, or transfer the Common Areas, in whole or in part, but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this Article 21.5(d); and
 - (d) Use hazard insurance proceeds for losses to any Condominium Development property (whether to Units or to the Common Areas) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or Common Areas.
- 21.6 Relationship with Assessment Liens.**

- (a) In accordance with Utah Code § 57-8-44, the lien provided for in Article 8 for the payment of Assessments shall be subordinate to: (1) a lien or encumbrance recorded before the Enabling Declaration was recorded; (2) a first or second security interest on the Unit by Lender which was recorded prior to the recordation of any notice of lien by, or on behalf of, the Association; or (3) a lien for real estate taxes or other governmental assessments or charges against the Unit.
- (b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender with a superior lien, and (2) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
- (c) Without limiting the provisions of Article 21.6(b), any Lender who obtains title to a Unit by reason of any foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Development.
- (d) Nothing in this Article 21.6 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration.

**ARTICLE 22:
GENERAL PROVISIONS**

- 22.1 **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.
- 22.2 **Non-liability of Officials.** To the fullest extent permitted by applicable law, neither the Board of Trustees 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.
- 22.3 **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 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).

- 22.4 **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 that Owner or that Owner's guest or Occupant, 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 against all losses and liabilities and to defend each and every other Owner and Occupant against, any claim of any Person for personal injury or property damage occurring within the indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's insurance; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 22.5 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a 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.
- 22.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Condominium Development, 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 Condominium Development acknowledges that the Association has no duty to any Owner, guest, 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 Condominium Development and/or residing in this Condominium Development, Owners and Occupants agree that the Association and the Board of Trustees are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, 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.
- 22.7 **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 Condominium Development 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 handicap (as defined by Federal law at the time the accommodation is requested) or disability (as

defined by state 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 Building, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Article shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

22.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE CONDOMINIUM DEVELOPMENT THAT THE ASSOCIATION AND THE BOARD OF TRUSTEES HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE CONDOMINIUM DEVELOPMENT 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 CONDOMINIUM DEVELOPMENT.

IN WITNESS WHEREOF, the undersigned officer or director of the Association hereby certifies that the Association obtained the approval of the requisite number of Owners, and any other third parties, in approving and adopting this Declaration, including all exhibits hereto.

IN WITNESS WHEREOF, the Association has executed this Declaration.

Dated this _____ day of _____, 2022.

CHATEAU FORET HOA

By: _____
Signature

Printed

Its: _____

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this _____, day of _____, 2022 by _____, holding the office of _____ of the Association and serving as a Member of the Board of Trustees for Chateau Foret HOA, and duly authorized to sign the same on its behalf.

Notary Public