

AFTER RECORDING, RETURN TO:
RS21 MAYFLOWER LLC
160 West Canyon Crest Road
Alpine, Utah 84004

Affects Parcel Nos.: 00-0021-4983
00-0021-4984
00-0021-5692
00-0021-5693
00-0021-5694
00-0021-5695
00-0021-5696
00-0021-4986
00-0021-4987

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MARCELLA**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MARCELLA (this “**Declaration**”) is made this 15th day of February, 2022, by RS21 MAYFLOWER LLC, a Delaware limited liability company (“**Declarant**”).

RECITALS

A. Declarant owns certain real property located in Wasatch County, Utah and more particularly described on Exhibit A hereto (the “**Development Property**”). The Development Property is part of the “**Initial Mountainside Property**” and “**Resort**,” as such terms are defined in that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Mountainside Village and Resort (as amended, modified, superseded or supplemented from time to time, the “**Master Declaration**”), which Master Declaration was recorded in the office of the Wasatch County Recorder on August 21, 2020 as Entry No. 483149 in Book 1308 at Page 27. The “**Declarant**” under the Master Declaration is BLX Mayflower LLC, a Delaware limited liability company (“**Master Declarant**”). Capitalized terms used herein, but not defined herein, shall have the same meanings ascribed to such terms in the Master Declaration.

B. Declarant desires and intends to develop in phases all or portions of the Development Property as a common scheme and planned mountainside residential development to be initially known as Marcella (the “**Development**”). The Development is not a cooperative within the meaning of the Utah Community Association Act, U.C.A. Section 57-8a-212. This Declaration does not create a condominium within the meaning of the Utah Condominium Ownership Act.

C. Declarant will provide leadership in organizing and administering the Development during the “**Administrative Control Period**” (as defined herein), and may collect a fee in connection therewith, but expects property owners in the Development will accept the responsibility for community administration after the Administrative Control Period.

D. The Development Property made subject to this Declaration is also subject to the Master Declaration, the provisions of which are not amended, modified, waived or superseded by this Declaration.

E. Declarant desires to subject the Development Property to the covenants, conditions, restrictions, easements and assessments set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the foregoing recitals is incorporated into and made a part of this Declaration, and further declares that the Development Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and assessments, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

1. **Defined Terms.**

(a) **“Administrative Control Period”** means (a) the period of time during which the Class “B” Member retains authority to appoint and remove members of the Board or (b) exercise power or authority assigned to the Association under the Governing Documents. The Administrative Control Period shall terminate on the first to occur of the following:

i. Sixty (60) days after the date when ninety percent (90%) of the total number of Development ERUs (as defined in and permitted by the Mountainside Master Plan) for the Development Property (as it may be amended from time to time) have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders or Declarant’s Affiliates;

ii. December 31, 2070; or

iii. The day the Class “B” Member in its discretion, after giving written notice to all Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

(b) **“Assessments”** means all assessments and other charges, fines and fees imposed by the Association or the Master Association on an Owner in accordance with this Declaration and/or the Master Declaration.

(c) **“Association”** means the nonprofit corporation to be formed to serve as the association of Unit Owners as provided in Section 3 below, and its members include, and are limited to, the Owners of the Units in the Development.

(d) **“Board of Directors”** or **“Board”** mean and refers to the Board of Directors of the Association.

(e) **“Bylaws”** means the Bylaws of the Association attached as Exhibit B, as the same may be amended from time to time.

(f) **“Class “A” Member”** is defined in Section 5(b)(i) below.

(g) **“Class “B” Member”** is defined in Section 5(b)(ii) below.

(h) **“Club”** means a private recreational club located within the Commercial Unit and operated in accordance with any and all Club governing documents, which shall be approved in writing by Master Declarant.

(i) **“Commercial Unit”** or **“Commercial Units”** means a Unit or any portion of a Unit that is designed for, or in which is operated or conducted primarily for the Club, or such other non-residential use or service that is specifically identified as a Commercial Unit in a Supplemental Declaration, or in another Recorded instrument recorded by the Declarant and affecting a portion of the Development. As of the date this Declaration is Recorded, “Parcel B” identified on the Galena Two Recorded plat of the Development Property is the only Commercial Unit in the Development.

(j) **“Common Areas”** means any portion of the Development Property designated as Common Areas and/or Limited Common Areas on a Recorded plat thereof, as the same may be amended from time to time, and any other real or personal property, including easements, that the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

(k) **“Common Areas and Facilities”** means the Common Areas and the Common Facilities, collectively.

(l) **“Common Facilities”** means all personal property, equipment and Improvements on real property owned, leased, controlled or maintained by the Association, and shall include personal property, equipment and Improvements financed by, or secured by the assets of the Association (which assets include the Association’s right to levy and/or collect Assessments, charges, fines and penalties pursuant to this Declaration, and all amounts so collected). Common Facilities may include personal property, equipment and Improvements on real property not owned by the Association, but which Declarant, Declarant’s Affiliates, or the Association has agreed to operate and/or maintain on behalf of any Governmental Authority. The Club is not a Common Facility.

(m) **“Declarant’s Affiliate”** has the same meaning as described in the Master Declaration but is applicable to the Declarant hereunder.

(n) **“Governing Documents”** means the Articles of Incorporation and Bylaws of the Association, the Master Declaration and the Master Association rules and regulations, this Declaration, any Recorded Supplemental Declaration, the Design Guidelines, Resort Rules, and resolutions duly adopted by the Board of Directors of the Association, and any amendments or replacements to any of the foregoing documents.

(o) **“Owner”** means any Person, including Declarant and Declarant’s Affiliates, owning of Record a fee simple title interest in and to any Unit in the Development, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Unit (unless such Mortgagee has acquired fee simple title interest in such Unit pursuant to foreclosure or any proceedings in lieu of foreclosure). The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. If a Unit is Sold under a Recorded contract of sale, and the contract so provides, the purchaser (rather than the fee owner) will be considered to be the “Owner” for the purposes of this Declaration.

(p) **“Residential Unit”** means a Unit in the Development that is intended to be improved with a single-family residence. As of the date this Declaration is Recorded, “Lot 1” through “Lot 20” identified on the Galena One Recorded plat of the Development Property and

“Lot 21” through “Lot 60” identified on the Galena Two Recorded plat of the Development Property comprise all of the Residential Units in the Development.

(q) “**Unit**” means a portion of the Development, whether improved or unimproved, which may be independently owned, including, without limitation, each Residential Unit and the Commercial Units. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of Vacant Land, the applicable parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel into Residential or Commercial Units and a Supplemental Declaration is Recorded with respect thereto. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding provisions of this Section. Any portion not encompassed on such plat shall continue to be treated in accordance with this Section. Notwithstanding the foregoing, any parcel of real property owned, held or used in its entirety (i) by the Association, (ii) as common area in the Development Property, (iii) by any Governmental Authority, (iv) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, communications, cable television or any other utility service, or (v) solely for access to or through all or any portion of the Development, shall not be considered a Unit. In addition, the term “Unit” shall not include any portion of the Mountainside Ski Property or any portion of the Development that is subject to a Mountain Easement Agreement.

2. **Incorporation of Master Declaration by Reference.** The terms, covenants and conditions of the Master Declaration are incorporated herein by reference. In the event of a conflict between the terms and conditions of this Declaration and the Master Declaration, the Master Declaration shall govern. Declarant and each Owner within the Development Property assumes and agrees to perform the obligations under the Master Declaration to the extent that such obligations are applicable to the Development Property. Declarant and each Owner shall not commit or suffer any act or omission that will violate any of the provisions of the Master Declaration. Any Master Declarant rights under the Master Declaration shall be applicable to and specifically enforceable by Declarant with respect to the Development Property, so long as such rights are approved in writing by the Master Declarant.

3. **Association.** Declarant shall organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Association shall own, operate, and/or maintain various common areas and community improvements in the Development Property and administer and enforce this Declaration and the other Governing Documents. The Bylaws of the Association are attached as **Exhibit B.**

4. **Assessments.** The Master Association and/or the Association shall levy Assessments against each Owner, which shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation and maintenance of any Common Areas and Facilities. Such maintenance and servicing may include, without limitation, snow removal from the Common Areas and Facilities and any private roads within the Development. The Association and/or the Master Association may levy Annual Assessments, Special Assessments, Emergency Assessments, and Special Individual Assessments, among others, in accordance with Applicable Laws. Such Assessments and charges, together with any interest, expenses or attorneys’ fees imposed to enforce such Assessments, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made; provided, however, (i) that no lien shall attach to any Residential Unit owned by Declarant or Declarant’s Affiliates until such time as the Residential Unit is occupied for a residential use, or until such earlier time as Declarant in its sole discretion shall determine, subject to accrual of reserves, and (ii) the Commercial Units shall not be subject to Assessments until the expiration of the Administrative Control Period or such earlier time as Declarant in its sole discretion shall determine.

5. **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Units.** Residential Units shall be allocated one vote per Residential Unit. Commercial Units shall be allocated one vote per Commercial Unit.

(b) **Classes of Voting Membership.** The Association shall have two classes of voting membership: Class "A" and Class "B":

(i) **Class "A".** Class "A" Members shall be all Owners of Units with the exception of the Declarant and shall be entitled to voting rights for each Unit owned computed in accordance with Section 5(a). When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Unit than as set forth in Section 5(a).

(ii) **Class "B".** The Class "B" Member shall be Declarant. The Class "B" Member shall have the right to appoint the members of the Board during the Administrative Control Period. Additional rights of the Class "B" Member are specified in relevant sections of the Governing Documents. After termination of the Administrative Control Period, Declarant shall have the right to disapprove actions of the Board and committees as provided in the Governing Documents. The Class "B" Member shall be entitled to five times the voting rights computed under Section 5(a) for each Unit owned by Declarant. Solely for purposes of calculating the voting right of the Class "B" Member, the number of Units owned by the Declarant shall be deemed to include the additional unplatted Units shown on the then-current Mountainside Master Plan for the Vacant Land portion of the Development Property. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

1. two (2) years after the expiration of the Administrative Control Period; or
2. At such earlier time as Declarant in its discretion may elect in writing to terminate the Class "B" membership in a Recorded instrument.

6. **Easements and Other Rights.** Declarant hereby reserves to itself, Declarant's Affiliate, and other third parties (i) various easements throughout the Development Property to facilitate the Development, including, without limitation, utility easements, ingress and egress easements (for both vehicular and pedestrian traffic), and encroachment easements, and (ii) various rights to complete the Development, Improvements, and the sale of the Units as it may deem appropriate in its sole discretion, which easements and rights may be amended from time to time.

7. **Rental Restrictions; Use Restrictions.** An Owner of a Residential Unit may not lease or rent such Residential Unit or any portion thereof to any Person for a period of less than thirty (30) days without the prior written approval of the Board of Directors and Declarant, which approval may be withheld in the sole discretion of either of them and, provided further, no such approval be granted until such short-term rental is first approved pursuant to the requirements of the Master Declaration. An Owner of a Residential Unit desiring to rent or lease the Unit for a period in excess of thirty (30) days shall provide the Board of Directors and the Association with written notice of such rental or leasing on an approved

notification form available from the Board of Directors, said written notice to be delivered to the Board of Directors and the Association not less than ten (10) days prior to the commencement of the lease or rental term. To the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on any approval, including, without limitation, a requirement that all occupants of a Residential Unit be members of a single housekeeping unit, limiting the total number of occupants permitted in each Residential Unit on the basis of the Residential Unit's size and facilities and fair use of the Common Areas and Facilities, and a reasonable limit on the number of individuals who may use the Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit, provided that such conditions shall not include approval of the prospective renter, payment of an additional fee, or, unless the Owner is required to provide the Board of Directors with such documents pursuant to a court order or as part of discovery under the Utah Rules of Civil Procedure, provision of a copy of the rental agreement, provision of the prospective renter's credit information, credit report or background check. Notwithstanding anything to the contrary in this Declaration, in no event shall an Owner of a Residential Unit lease or rent such Residential Unit to any Person for the purpose of such Person holding any special event, including, but not limited to, a family reunion, holiday party, or wedding or other ceremony, in such Residential Unit, but specifically excluding any non-commercial events held by the Owner of such Residential Unit. Except as otherwise provided herein, the use restrictions set forth in the Master Declaration shall apply to all of the Development Property and the Owners thereof. In addition, any additional use restrictions that are included in any amendment to this Declaration shall be binding on all of the Development Property and the Owners thereof.

8. **Community Reinvestment Fees.**

(a) Pursuant to Section 11.20 of the Master Declaration, each purchaser of a Unit, upon closing the acquisition of such Unit, shall pay to the Master Association the Community Reinvestment Fee, in accordance with the terms of the Master Declaration. The Community Reinvestment Fee shall be used exclusively for the purposes set forth in the Master Declaration.

(b) In order to provide the Association with the funding necessary to carry out the purposes for which it was formed, an additional community reinvestment fee is hereby established in accordance with Utah Code § 57-1-46 applicable to any Transfer ("**Additional Community Reinvestment Fee**"). The Additional Community Reinvestment Fee shall be subject to the same terms and conditions as the Community Reinvestment Fee set forth in the Master Declaration, except that (i) the Additional Community Reinvestment Fee shall be due to the Association hereunder, (ii) Declarant shall be the Declarant hereunder, and (iii) unless the Board adopts a rule otherwise, the Additional Community Reinvestment Fee shall be equal to 0.25% of the gross sales price of the Unit, less actual customary expenses of sale.

9. **Club.** In connection with the development of the Development Property, Declarant has or will be facilitating the development and use of the Commercial Units for the Club, as a private amenity. Declarant hereby provides notice to all Owners of a Unit in the Development Property, and Owners hereby acknowledge and agree, that ownership in the Development Property may require such Owners to be members of the Club. Non-Owners may also be members of the Club.

10. **Conveyance to Trustee.** Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to High Country Title, with power of sale, the Units and all Improvements to such Units for the purpose of securing payment of Assessments under the terms of this Declaration. The foregoing trustee may be replaced by the Association pursuant to a Recorded written notice identifying a substitute trustee meeting the requirements of U.C.A. Sections 57-1-20 and 57-8a-302.

11. **Amend and Restate.** Notwithstanding any limitations under Applicable Law, prior to termination of the Administrative Control Period, and subject to the requirements of the Master Declaration,

the Class "B" Member may unilaterally amend and restate this Declaration in its entirety for any purpose. This Declaration is intended to be temporary and Declarant plans to amend and restate this Declaration in its entirety with a more robust Declaration that is anticipated to exceed one-hundred (100) pages.

12. **Annexation of Additional Property.** Subject to the terms of the Master Declaration, such Governmental Authority approvals as may be required by under Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Development Property, Declarant may from time to time and in its sole discretion add to the Development Property any additional real property, now or hereafter acquired by Declarant, and may also from time to time and in its sole discretion allow other holders of real property to add real property owned by them to the Development Property.

13. **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all land included within the Development Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is first Recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all land within the Development Property and the Owners thereof for successive additional periods of ten (10) years each.

14. **Construction; Severability; Number; Captions.** This Declaration, together with the Master Declaration, shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15. **Notices and Other Documents.** All notices shall be delivered in accordance with the procedures set forth in the Master Declaration. If to Declarant or the Association, 160 West, Canyon Crest Road, Alpine, Utah 84004; if to Master Declarant or the Master Association, 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098; if to an Owner, at the address given at the time of the Owner's purchase of a Unit, or at the Unit.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

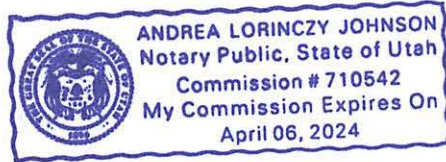
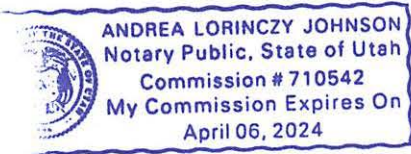
RS21 MAYFLOWER LLC,
a Delaware limited liability company

By: [Signature]
Name: J. Brett Boren
Its: Manager of RS21 Mayflower Manager LLC, its Manager


STATE OF Utah)
COUNTY OF Utah) :ss.


The foregoing instrument was acknowledged before me this 15th day of February, 2022, by J. Brett Boren, as Manager of RS21 MAYFLOWER LLC, a Delaware limited liability company.

[Signature]
Notary Public






 ANDREW LOHMEYER JOHNSON
 Notary Public, State of New York
 Commission # 310245
 My Commission Expires On
 4/20/2024


 ANDREW LOHMEYER JOHNSON
 Notary Public, State of New York
 Commission # 310245
 My Commission Expires On
 4/20/2024



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EXHIBIT A

Development Property Legal Description

The "Development Property" referred to in this Declaration is located in Wasatch County, State of Utah, and is more particularly described as follows:

The surface rights in and to all of:

Lots 14, 15A, 16 and 17 of the MIDA MASTER DEVELOPMENT PLAT, recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such lots are depicted and described by metes and bounds on the MIDA Master Development Plat.

And

Lots 15B-1, 15B-2, 15B-3, 15B-4, 15B-5 of MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended recorded Feb 10, 2021 as Entry No. 493880 on file and of record in Wasatch County Recorder's Office, as such lots are depicted and described by metes and bounds on the MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended.

LESS AND EXCEPTING from Lot 14 the following real property:

A parcel of and located in the south half of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described as follows:

Beginning at a point that is South 26°11'47" East 2912.64 feet and South 63°48'13" West 735.80 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°91'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); and running thence South 65°00'24" East 401.07 feet thence North 82°21'32" East 311.98 feet to a point on the westerly right of way of US Highway 40 thence coincident with the right of way of said US Highway 40 more or less the following three (3) courses 1) South 55°13'48" East 141.20 feet; thence 2) North 88°11'09" East 651.65 feet; thence 3) South 18°47'08" East 376.66 feet; thence South 71°14'32" West 128.38 feet; thence South 49°45'50" West 224.76 feet; thence South 03°11'32" West 442.52 feet; thence South 43°37'48" West 416.08 feet; thence South 69°15'20" West 1151.44 feet; thence North 29°02'07" West 295.68 feet; thence North 05°16'23" West 146.79 feet; thence North 30° 39'47" East 132.48 feet; thence North 01°37'02" East 76.00 feet; thence North 29°27'18" West 259.84 feet; thence North 26°54'51" West 414.46 feet; thence North 34°36'18" East 507.10 feet; thence North 40°37'35" East 360.95 feet to the point of beginning.

Description contains 55.99 acres.

LESS AND EXCEPTING from Lot 16 the following real property:

A parcel of and located in the North half of Sections 25 & 26, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described as follows:

Beginning at a point that is South 26°11'47" East 450.38 feet and South 63°48'13" West 2750.69 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°91'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); and running thence South 13°38'02" West 40.00 feet; thence South 40°15'39" West 320.27 feet; thence South 77°02'11" West 160.99 feet to a point on the West line of said section 25; thence South 77°02'11" West 32.89 feet; thence South 19°56'38" West 190.58 feet; thence South 12°57'49" East 171.74 feet; thence South 77°32'47" West 384.49 feet; thence North 12°27'13" West 423.27 feet; thence North 64°45'46" East 191.55 feet; thence North 86°54'11" East 352.60 feet to a point on West line of said section 25; thence North 86°54'11" East 29.17 feet; thence North 40°15'39" East 125.82 feet; thence North 34°58'31" East 131.22 feet; thence North 78°49'27" East a distance of 191.15 feet to the point of beginning.

Description contains 5.51 acres.

LESS AND EXCEPTING from Lot 17 the following real property:

A parcel of land located in the south half of Section 24, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described as follows:

Beginning at a point that is North 00°00'41" West 437.97 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Bass of Bearings for the heron described parcel being South 26°11'47" East 5917.16 feet from said North Quarter Corner of Section 25 to the Southeast Corner of said Section 25 said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Mops 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LOP coordinate system projection parameters) and running thence North 00°00'41" West 345.13 feet to a point on a non tangent curve to the right having a radius of 904.09 feet of which the radius point bears South 49°32'05" West said point being on the westerly right of way of US Highway 40 thence coincident with the right of way of said US Highway 40 the following two (2) courses 1) along the arc of said curve 221.00 feet through a central angle of 14°00'20" thence 2) South 26°31'07" East 90.19 feet; thence South 63°33'14" West 180.81 feet to the POINT OF BEGINNING.

Description contains 0.69 acres.

LESS AND EXCEPTING any mineral rights of whatever type, water rights, water shares, and any

other water interests associated with the above-described real property.

<u>Lot</u>	<u>Description</u>	<u>Serial Number</u>	<u>Tax Parcel</u>
Lot 14	Estate Lots	0IX-L014-0-025-024	00-0021-4983
Lot 15A	Estate Lots	0IX-L015A-0-025-024	00-0021-4984
15B-1	Estate Lots	0IX-L15B-1-025-024	00-0021-5692
15B-2	Estate Lots	0IX-L15B-2-025-024	00-0021-5693
15B-3	Estate Lots	0IX-L15B-3-025-024	00-0021-5694
15B-4	Estate Lots	0IX-L15B-4-025-024	00-0021-5695
15B-5	Estate Lots	0IX-L15B-5-025-024	00-0021-5696
Lot 16	Estate Lots	0IX-L016-0-025-024	00-0021-4986
Lot 17	Estate Lots	0IX-L017-0-024-024	00-0021-4987

EXHIBIT B

Bylaws

[See Attached]

BYLAWS
OF
MARCELLA HOA, INC.,
A UTAH CORPORATION

ARTICLE I

NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name.** The name of the corporation is Marcella HOA, Inc., a Utah corporation (the “Association”).

1.2 **Principal Office.** The principal office of the Association shall be located at 160 West Canyon Crest Road, Alpine, Utah 84004. The Association may have such other offices, either within or outside the State of Utah, as the Board may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these Bylaws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these Bylaws are attached unless the context indicates otherwise.

ARTICLE II

MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 **Membership.** The Association shall have two classes of membership, Class “A” and Class “B,” as more fully set forth in the Declaration. Class “A” Members shall be known as “Members.” The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate. Notwithstanding the foregoing, any meeting of the Association, whether regular or special, may be held in whole or in part by means of telephone or video conference, and, any Member who participates in any meeting by such means shall be deemed present at such meeting for all purposes whatsoever including the determination of whether a quorum is present and voting on all matters that shall come before such meeting.

2.3 **Annual Meetings.** The Association’s first meeting, whether a regular or special meeting, shall be held within one year after the date of the Association’s incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association’s fiscal year on a date and at a time set by the Board.

2.4 **Special Meetings.** The president of the Association (the “President”) may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Class “A” Members representing at least 10% of the total Class “A” votes of the Association.

2.5 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Association shall be delivered, either personally or by mail, to each Member entitled to vote

at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the secretary of the Association (the "Secretary") or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with Section 6.5 hereof and addressed to the Member at the Member's address as it appears on the Association's records, with postage prepaid.

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

2.7 **Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.8 **Proxies.** Members may not vote by proxy, but only in person.

2.9 **Quorum.** For purposes of any Association meeting, a quorum shall consist of the Members actually in attendance at such Association meeting.

2.10 **Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 **Actions Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents, as filed with the minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III

BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS

A. Composition and Selection

3.1 **Governing Body: Composition.** The Board shall govern the Association's affairs. Each director of the Board ("Director") shall have one vote. Except with respect to the Class "B" Member's appointees, Directors shall be Owners owning the majority interest in a Unit or, if the majority Owner of a Unit is not a natural person, the natural person owning a controlling interest in such majority Owner.

3.2 Number of Directors. The Board shall initially consist of three (3) Directors. Provided the Board shall at all times consist of an odd number of Directors, the number of Directors comprising the Board may be altered, by the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, to include between three (3) and seven (7) Directors. The initial Board shall consist of three (3) Directors as identified in the Articles.

3.3 Directors During Administrative Control Period. Directors appointed by the Class "B" Member pursuant to Section 3.5 hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 Nomination and Election Procedures.

(a) **Nominations and Declarations of Candidacy.** Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position that Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board may also be made by a nominating committee (the "Nominating Committee"). The Nominating Committee, if any, shall consist of a chairperson, who shall be a member of the Board, and three or more representatives of Members. The Board shall appoint members of a nominating committee (the "Nominating Committee") not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate Directors to be elected at large by all Class "A" votes. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations for Directors may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Members and signed by the nominee named therein indicating such nominee's willingness to serve as a Director, if elected. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the candidates nominated by the Nominating Committee. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Except as these Bylaws may otherwise specifically provide, election of Directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these Bylaws:

(a) During the Administrative Control Period, the Class "B" Member shall appoint the three (3) Directors comprising the initial Board. If any such Director resigns or is removed from such position prior to the happening of the event described in subsection (b), the Class "B" Member shall appoint a successor Director.

(b) Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to

five (5) and the President shall call for an election by which the Members shall be entitled to elect each of the five (5) Directors. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following their election to the Board.

3.6 Removal of Directors and Vacancies. By the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, the Members may remove, with or without cause, any Director elected by Members. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such Director. Any Member-elected Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term. Any Director whom the Board appoints shall be selected from among the Members. This Section shall not apply to Directors the Class "B" Member appoints. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a Director appointed by or elected as a representative of the Class "B" Member.

B. Meetings

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 Special Meetings. The Board shall hold special meetings when the President or the vice president of the Association (the "Vice President") or any two Directors signs and communicates written notice of such.

3.10 Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each Director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board Meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings; Executive Session.

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Development which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which Assessments are to be established shall state that fact and the nature of the Assessment. Subject to the provisions of Section 3.15 hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than Directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

3.16 Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

3.17 Duties. Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget, which budget shall include a line item for future Assessments for the Reserve Fund, which shall be approved in accordance with the Declaration, and establishing each Owner's share of the Common Expenses;

(b) levying and collecting fines or Assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Common Areas consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing

Documents and all other books, records, and financial statements of the Association as provided in Section 6.4 hereof;

(n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Development;

(o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, or the Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.18 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.19 Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair the rights of the Class "B" Member or Builders under the Declaration or these Bylaws, or interfere with development or construction of any portion of the Development, or diminish the level of services the Association provides.

(a) **Notice.** The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies, as to Board meetings, with Sections 3.9 and 3.10 hereof and which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard.** The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions

but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Class "B" Member or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - (iv) a balance sheet as of the last day of the preceding period; and
 - (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be

considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or complied basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Administrative Control Period, the annual report shall include certified financial statements.

3.22 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall fulfill the requirements provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

3.23 **Rights to Contract.** The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or resident associations, within and outside the Development. Any common management agreement shall require the consent of a majority of the Board.

3.24 **Enforcement.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, including any fine in an amount set forth in the Rules, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee (as hereinafter defined), if one has been appointed pursuant to Article V hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation, if such abatement is sought, shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed a trespass.

3.25 Board Standards. In the performance of their duties, Association Directors and officers shall be insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV

OFFICERS

4.1 Officers. Officers of the Association shall be a President, Vice President, Secretary, and treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable. Such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term Office. The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Power and Duties. The Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be

conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time later specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.18 hereof.

ARTICLE V

COMMITTEES

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1 hereof, the Board may appoint a covenants committee (the "Covenants Committee") consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 hereof.

ARTICLE VI

MISCELLANEOUS

6.1 **Fiscal Year.** The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

6.3 **Conflicts.** If there are conflicts among the provisions of Utah law, the Articles, the Declaration, and these Bylaws, the provisions of Utah law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

6.4 **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any

Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Development as the Board shall designate

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

6.5 **Notices.** Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail. First class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Members;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 **Amendment.**


(a) **By Class "B" Member.** Prior to termination of the Administrative Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

The foregoing Bylaws were adopted under the laws of the State of Utah, as of the 15th day of February, 2022.

MARCELLA HOA, INC.,
A UTAH CORPORATION

Name: 
Title: President