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MARCY M MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
For: RS21 MAYFLOWER LLC

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RS21 Mayflower LLC  
2600 N. Ashton Blvd, #200  
Lehi, Utah 84043  
Attention: Damon Georgelas

*Space Above for County Recorder's Use*

Tax Parcel I.D. Nos.: All or portions of  
00-0021-4988; 00-0021-8518;  
00-0021-8519; and 00-0021-8520

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

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**A MIXED-USE TOWNHOME PROJECT  
IN  
WASATCH COUNTY, UTAH**

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**BY  
RS21 MAYFLOWER LLC  
A DELAWARE LIMITED LIABILITY COMPANY,  
AS DECLARANT**

September 10th 2024

**TABLE OF CONTENTS**

(Note – This Table of Contents focuses on key Articles of this Declaration  
and is not intended to include all Sections or Subsections.)

RECITALS	1
ARTICLE 1 DEFINITIONS	4
ARTICLE 2 CREATION AND MANAGEMENT OF THE PROJECT	14
ARTICLE 3 GRANT OF EASEMENTS	14
ARTICLE 4 DEVELOPMENT AND OPERATION OF PROJECT	21
ARTICLE 5 ASSOCIATION’S DUTIES REGARDING COMMON AREAS AND FACILITIES	28
ARTICLE 6 COMMON EXPENSES	33
ARTICLE 7 ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ENFORCEMENT OF ASSESSMENT LIEN	38
ARTICLE 8 TAXES, INSURANCE, AND INDEMNIFICATION	39
ARTICLE 9 PROHIBITED OR RESTRICTED OWNERSHIP AND USES	41
ARTICLE 10 EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES	43
ARTICLE 11 CLUB MEMBERSHIP AND OPERATIONS	44
ARTICLE 12 SPECIAL DECLARANT RIGHTS	45
ARTICLE 13 COVENANTS TO RUN WITH LAND	48
ARTICLE 14 ANNEXATION OF ADDITIONAL PROPERTY	48
ARTICLE 15 AMENDMENTS TO DECLARATION	48
ARTICLE 16 DISPUTE RESOLUTION	49
ARTICLE 17 NO REPRESENTATIONS OR WARRANTIES; DISCLAIMERS AND ACKNOWLEDGEMENTS	54
ARTICLE 18 MISCELLANEOUS	64



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

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR MARCELLA LANDING ("Declaration") is entered into and executed as of this 10th day of September, 2024 ("Effective Date"), by **RS21 MAYFLOWER LLC**, a Delaware limited liability company ("Declarant"), whose address is 2600 N. Ashton Blvd, #200, Lehi, Utah 84043, Attention: Damon Georgelas.

**RECITALS**

A. Declarant is the owner of certain real property more particularly described in Exhibit "A" attached hereto (collectively, the "Project"), which Project is being developed as a mixed-use commercial and residential project that has recently been platted and subdivided into fifty (50) separate residential townhome units (each, a "Unit" and collectively, the "Units"), and two (2) commercial lots or parcels (each, a "Commercial Lot" and collectively, the "Commercial Lots"), and the Roadways (as defined below), in accordance with that certain Marcella Landing Condominium Plat, recorded in the Official Records (as defined below) on September 10th, 2024, as Entry No. 549864, in Book 1487, beginning at Page 1437 ("Plat"). The Project, the Units, and the Commercial Lots are depicted on the Plat attached hereto as Exhibit "B".

B. As of the Effective Date, Declarant is the sole owner of the Project and each of the individual Units and Commercial Lots. Consequently, Declarant has full right, title, and authority to execute, acknowledge, and record this Declaration in the Official Records.

C. The overall Project, the Units, the Commercial Lots, and the Roadways are part of a mixed-use commercial and residential project commonly referred to as "Marcella Landing", which will include certain common areas, limited common areas, open areas, private utilities, private amenities, club amenities, and other Improvements (as defined below). As of the Effective Date, Declarant has applied for, submitted, and received preliminary and/or final land use approvals, entitlements, and permits from the Military Installation Development Authority, a political subdivision of the State of Utah ("MIDA"), in connection with the development of the Project, the Units, and the Commercial Lots.

D. Declarant intends to sell to various purchasers the fee title to each of the individual Units and intends to sell, transfer, and/or lease the Commercial Lots contained within the Project, together with a corresponding membership interest in the Association (which shall own the Common Areas and Facilities (as defined below) and certain other Improvements), subject to, among other things, the Plat, and the Restrictions (as defined below) and certain other

rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration.

E. The Project possesses great natural beauty which Declarant desires and intends to preserve through the implementation of a general and coordinated plan of development and ownership for the overall Project and through this Declaration. It is assumed by Declarant that each of the Owners, Occupants, and other Persons (as each of these terms are defined below) having any rights, title, or interests in the Project, or any portions thereof, will be motivated to preserve the great natural beauty and general and coordinated plan, comprehensive land planning, and other qualities of the Project through its cooperation and compliance with both the letter and spirit of this Declaration.

F. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Occupants, and other Persons of the Units, the Commercial Lots, and the Common Areas and Facilities, as applicable, certain covenants, conditions, restrictions, easements, rights (including, certain reserved rights), privileges, assessments, and liens as set forth in this Declaration (collectively, the "Restrictions").

G. Declarant hereby declares, by recording this Declaration and the Plat in the Official Records, that the entirety of the Project and each of the individual Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways are to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, built upon, improved, and/or otherwise used or transferred, whether in whole or in part, subject to the Restrictions and all other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration, as may be amended from time-to-time, all of which are declared and agreed to be in furtherance of an overall general and coordinated plan for the protection, maintenance, operation, and improvement of the Project, the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways. All of the Restrictions and any other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration are hereby imposed as equitable servitudes upon the Project and each of the individual Units, Commercial Lots, Common Areas and Facilities, and Roadways. All of the Restrictions and any other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration shall run with and burden the Project as a whole and each of the individual Units and Commercial Lots (burdening all Owners, Occupants, and other Persons having any rights, title, or interests in any of same, or any part thereof, and their successive owners and assigns) and each of the Common Areas and Facilities and the Roadways (burdening the Association and any Owners and Persons having any rights, title, or interests in any of same, or any part thereof, and their successive owners and assigns). The Project is not a cooperative.

H. One of the primary purposes of this Declaration is to provide for a general and coordinated plan of development and ownership for the overall Project and each of the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways for the efficient use, enjoyment, operation, maintenance, repair, improvement, and restoration of the Project and each of the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways, for the enhancement and preservation of the values, desirability, and attractiveness of the Project and each of the Units, Commercial Lots, the Common Areas and Facilities, and the Roadways

(including, the protection, maintenance, and operation of the Improvements), for the protection of the Declarant's and the Owners' rights, benefits, and privileges contemplated in this Declaration, and for the payment of taxes, assessments, insurance premiums, and other expenses pertaining thereto.

I. The Declarant intends that the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project, or any portions thereof, including their successive owners and assigns, shall at all times enjoy the benefits of, and shall hold, sell, lease, and convey their interests subject to the Restrictions and any other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration, all of which are hereby declared to be in furtherance of an overall general and coordinated plan to promote and protect the cooperative aspects of the Project, the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways and are established for the purpose of enhancing the value, desirability, and attractiveness of the Project. Declarant intends that, in accordance with Section 57-8-10(2)(d)(vi) of the Act (as defined below), the Act shall apply to all aspects of the Project, the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways. In addition, in order to accomplish the object of creating a mixed-use commercial and residential project and to protect and preserve the long-term viability and value of the Project, it is necessary that Declarant maintain a certain level of control over the Project, the Units, the Commercial Lots, the Common Areas and Facilities, and the Roadways that may be atypical to that found in a traditional mixed-use commercial and residential project. Accordingly, each Owner, by acceptance of a deed or otherwise acquiring title to (or control over) such Owner's respective Unit and/or Commercial Lot, agrees and acknowledges that certain provisions contained in this Declaration may vary from a traditional application of the requirements of the Act and each Owner hereby agrees and acknowledges to accept such variations and agrees not to challenge the enforceability of this Declaration or the Project Documents (as defined below) or the validity of the mixed-use commercial and residential project regime or regimes established by this Declaration as a result of such variations.

### **DECLARATION**

NOW, THEREFORE, in furtherance of such intent, and in consideration of the mutual benefits to be derived from this Declaration, and for the reasons recited above, Declarant hereby declares that the entirety of the Project and each of the Units, the Commercial Lots, and the Common Areas and Facilities shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the Restrictions and any other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration, as may be amended from time-to-time, all of which Restrictions and any other rights, easements, covenants, conditions, obligations and other matters are declared to be in furtherance of a general and coordinated plan for the development and ownership of the Project and established for the enhancement and preservation of the values, desirability, enjoyment, and attractiveness of the Project and each of the Units, Commercial Lots, and the Common Areas and Facilities (including, the protection, maintenance, and operation of the Improvements), for the protection of the Declarant's and the Owners' rights, benefits, and privileges contemplated in this Declaration, and for the payment of taxes, assessments, insurance premiums, and other expenses pertaining thereto. All of the Restrictions and any other rights, easements, conditions,

limitations, obligations, and covenants contained in this Declaration are declared by Declarant to be and shall constitute covenants running with the land and equitable servitudes and liens and shall be binding upon and for the benefit of Declarant and all Owners, Occupants, and all other Persons having or acquiring any rights, title, or interests in the Project, the Units, the Commercial Lots, and/or the Common Areas and Facilities, or any portions thereof, including, but not limited to, the heirs, executors, administrators, and assigns of any such parties and all subsequent owners of such interest.

## ARTICLE 1 DEFINITIONS

As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1 “Act” means and refers to the Utah Condominium Ownership Act, UTAH CODE ANN. § 57-8-101, *et seq.*, as the same may be amended from time-to-time.

1.2 “Additional Charges” means and refers cumulatively to all collection and administrative costs and expenses, including, but not limited to, any attorneys’ fees and expenses, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association and any other amounts that the Association is entitled to recover under the Act or by administrative or judicial decision.

1.3 “Additional Property” means any property identified as “Additional Property” on the Plat, if any, and may also include any real property adjacent and contiguous to or in close proximity to the Project, which is later annexed into the Project in accordance with Article 14.

1.4 “Allocated Interest” means the undivided interest (based upon the assigned Par Value multiplied by the square footage of each applicable Unit and Commercial Lot, as further identified on Exhibit “D” attached hereto) in the Common Areas and Facilities, the Common Expenses, and votes in the Association allocated to each applicable Unit and Commercial Lot. The Allocated Interest calculations are further described and identified on the spreadsheet attached hereto as Exhibit “D”. The Allocated Interest may be revised and updated based upon the annexation of any applicable Additional Property, as provided for in this Declaration and in the Act. The Allocated Interest for Common Expenses attributed to each Unit and Commercial Lot is identified on Exhibit “D” attached hereto.

1.5 “Articles of Incorporation” means and refers to the Articles of Incorporation of Marcella Landing Townhomes Association Inc., which document was filed with the Utah Department of Commerce, Division of Corporations and Commercial Code on August 28, 2024.

1.6 “Assessments” means and refers to (collectively) any applicable Common Expenses, common area assessments, Regular Assessments for Common Expenses, individual assessments, Special Assessments, specific assessments, Capital Improvement Assessment, reinvestment fee assessments, Benefitted Assessments, Corrective Assessments, and other assessments that may be charged, levied, or assessed by the Board of Directors and payable by an Owner of an individual Unit and/or Commercial Lot pursuant to the terms of this Declaration and the Act. The Assessments charged, levied, or assessed by the Board of Directors shall be used exclusively

for the purposes of promoting the health, safety, and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Project, enhancing the quality of life in the Project and the value of the Project operations including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Facilities, the Limited Common Areas, and in furtherance of any other duty or power of the Association.

1.7 “Association” means Marcella Landing Townhomes Association Inc., a Utah non-profit corporation, and its successors or assigns.

1.8 “Benefitted Assessment” shall mean an assessment levied against a Unit or Commercial Lot and its respective Owner in accordance with Section 6.4.

1.9 “Board” or “Board of Directors” means the board of directors of the Association who have been duly appointed or elected to perform their duties, as provided in the Articles of Incorporation, the Bylaws, and in accordance with the provisions of the Utah Revised Nonprofit Corporation Act, UTAH CODE ANN. § 16-6a-101, *et seq.*, as amended from time-to-time (the “Nonprofit Act”).

1.10 “Buildings” means all structures or buildings located on or within the Project at any time that are intended for residential use (including, those structures or buildings which contain one or more particular Units) or commercial use (with respect to the Commercial Lots), including, the basements and areas directly below such buildings, and all projections and extensions of, and additions to, such buildings, including, without limitation, any improvements affixed to the outside of such buildings (*excluding, however*, any minor convenience facilities, as contemplated under Section 3.4.4 below). “Building”, singular, means any of the Buildings located on or within the Project. Each Building has been designated on the Plat with a specific number, letter, symbol, or address (or combination of one or more of the aforementioned) (for example, “Building 1” or “Building A”). Notwithstanding anything in this Declaration to the contrary, no representation or warranty is made regarding whether there in fact will be any Buildings located on or occupied within the Project or any Buildings that will in fact contain one or more of the individual Units at any time.

1.11 “Bylaws” means and refers to the Bylaws of the Association attached to this Declaration as Exhibit “C”, as may be amended from time-to-time.

1.12 “Capital Improvement Assessment” shall mean an assessment levied against a Unit or Commercial Lot and its respective Owner in accordance with Section 6.3.

1.13 “Club” shall mean the Marcella Golf Club LLC, a Delaware limited liability company, the private organization operating and administering the Club Amenities. The Club shall be owned (or controlled), operated, and managed separately from, and not as a part of, the Association.

1.14 “Club Amenity” or “Club Amenities” shall mean those Buildings, Units, and/or Commercial Lots (including, but not limited to, certain Units within a particular Building), as applicable, and those facilities, lots, units, and improvements owned (or controlled), operated,



and managed by the Club for the benefit of the various types of Club Members as provided for in Article 11.

1.15 “Club Documents” shall mean, collectively, the Club Membership Application, and all other documents promulgated by the Club from time-to-time governing membership in the Club, all as the same may be amended, modified, or supplemented from time-to-time by the Club or Club Operator. Club Documents pertain solely to the Club and are separate from this Declaration and are not enforced by the Association or the Master Association in any manner.

1.16 “Club Member” shall mean a Person holding a membership in the Club and Club Members may include Persons that do not own any particular Unit or Commercial Lot.

1.17 “Club Membership Application” shall mean any Club membership application(s) required to become a Club Member, as such may be amended, modified, and/or supplemented from time-to-time.

1.18 “Club Operator” shall mean the Person designated in the Club Documents for the management of the Club as provided in the Club Documents.

1.19 “Commercial Lot” or “Commercial Lots” means each legally subdivided commercial lot within the Project in accordance with the Plat, or any other commercial lot to be legally subdivided or that can be legally subdivided in the future (including, as Additional Property) pursuant to this Declaration. As of the Effective Date, the Commercial Lots are designated on the Plat as parcels “C-1” and “C-2”. With the exception of any applicable utilities, utility facilities, and/or utility systems that were created, installed, improved, and constructed for the common or joint use and benefit of the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project, the Commercial Lots are intended to be private and for the singular use and benefit of the Owner, Occupants, and/or other Permittees of the Commercial Lots.

1.20 “Common Areas and Facilities” means those areas, improvements, and portions of the Project designated as “common areas” and/or “common areas and facilities” on the Plat and shall include those areas, items, and improvements listed in Section 57-8-3(5) of the Act, if and as applicable. The Common Areas and Facilities may be contained within one or more of the Units and/or the Buildings that are created, installed, improved, and constructed for the common or joint use and benefit of the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project. For illustration purposes, the Common Areas and Facilities within the Project are intended to include, but are not limited to, the Roadways, any Landscaping (as defined below), parking spaces and other parking areas, sidewalks, walkways, trails and paths (including, any applicable pedestrian, hiking, and/or biking trails and paths), stairs, ramps, curbs, gutters, retaining walls, common facilities and structures, open spaces, parks, playgrounds, light poles and fixtures, signs and signage improvements, utilities lines, facilities, systems, and improvements (including, but not limited to, the Storm Water Systems (as defined below) and the underground sewer and water systems that serve the Project), and other exterior common areas and amenities, but only to the extent located within those areas designated as “common areas” and/or “common areas and facilities” on the Plat and included within the scope of areas, improvements, and portions of the Project that have been designated under this Declaration for common or joint use and which serve and benefit more than one Unit and/or Commercial Lot.

Common Areas and Facilities shall not include (i) any interior private areas, improvements, or portions of the Units and/or Commercial Lots that are not common or intended for joint use and, instead, are designated and intended for the singular use and benefit of a particular Owner, Occupant, and/or other Permittee, (ii) any Roadways, Landscaping, streets, sidewalks, walkways, signs and signage improvements, parking spaces and other parking areas that are not common or intended for joint use and, instead, are hereby designated and intended for the singular use and benefit of a particular Owner, Occupant, and/or other Permittee, and (iii) any utilities, utility facilities, and/or utility systems that are not owned by the Association and are instead owned and maintained directly by the owners or operators of such utilities, utility facilities, and/or utility systems (for example, a water company, gas company, or telecommunications company). Declarant hereby declares that the Common Areas and Facilities that have been established, identified, and designated on the Plat as Roadways are designated as being for the common or joint use and benefit of the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project. Any areas, improvements, or portions of the Project not designated on the Plat as Common Areas and Facilities or falling within those areas, items, and improvements listed in Section 57-8-3(5) of the Act are, by default, hereby designated as part of the individual Units and Commercial Lots, as applicable, and intended for the singular use and benefit of a particular Owner, Occupant, and/or other Permittee. Notwithstanding the foregoing, the intentional or inadvertent designation of any portion of the Project as Common Areas and Facilities shall not prohibit the subsequent development thereon of a Building or combination of Units so long as all requirements of this Declaration are complied with in connection with such development. Additionally, the improvement or use of any portion of any building area of a Building as Common Areas and Facilities shall not be construed as a permanent inclusion of such portion within the Common Areas and Facilities, and such portions may, at any time thereafter, be improved with Buildings and Improvements so long as all requirements of this Declaration are complied with.

1.21 “Common Expenses” means the following:

1.21.1 commercially reasonable costs, expenses, fees, charges, and other amounts (including, appropriate reasonable reserves) paid or incurred by the Association in connection with the improvement (*excluding, however, the initial improvement and development*), operation, management, maintenance, repair, and replacement, as necessary and appropriate, of the Common Areas and Facilities and the performance of the Association’s rights, interests, duties, and obligations under Article 5 or any other provision of this Declaration, including, without limitation, all reasonable costs, expenses, fees, Additional Charges, and other amounts (including, without limitation, those that are properly capitalized under generally accepted accounting principles) relating to utilities, insurance, Roadways, Landscaping, replacing damaged or worn-out Improvements (including, any applicable signage and lighting) located on the Common Areas and Facilities, personnel (other than managerial personnel) necessary to perform any of the foregoing, and depreciation allowance on any machinery or equipment owned by the Association and used exclusively in connection with such matters;

1.21.2 any public or private assessment for improvements levied against the entire Project (such as a gross assessment against the Project only that is in the nature of an impact fee for the Project as a whole), and no other property, rather than against individual tax parcels (in or outside the

Project), including, but not limited to, any common, special, or other assessments arising under the Recorded Documents (as defined below) or charged by MIDA and any applicable governmental, quasi-governmental, service district, or other public authority.

1.21.3 any Taxes (as defined below) imposed, assessed, or levied by MIDA and any applicable governmental, quasi-governmental, service district, or other public authority on or against the Common Areas and Facilities;

1.21.4 managerial, clerical, and overhead costs, expenses, fees, and other related amounts; and

1.21.5 Common Expenses due but not paid to the Association, including, by way of example, any applicable Additional Charges, which are determined by the Association not to be legally or practicably recoverable after the Association has exercised its good faith, commercially reasonable efforts to collect the same from the responsible Owner and/or Owners and the Association has determined, in its commercially reasonable discretion, that all reasonable remedies for collection have been exhausted, including, the filing and enforcement of the Assessments lien described in Section 6.8, if appropriate, together with all interest on, costs and attorneys' fees, and other Additional Charges incurred in connection with, such unpaid Common Expenses; *provided, however*, that if such unpaid Common Expenses are later received by the Association from or on behalf of the responsible Owner and/or Owners, any amounts previously paid by any other Owners pursuant to the preceding portion of this sentence shall be refunded pro rata to such other Owners.

1.22 "Completed Building" means a particular Building within the Project as of the date either of the following has first occurred: (a) one or more final, permanent certificates of occupancy have been issued for a particular Building (including, those Units contained within such Building) by MIDA or the appropriate governmental authority; or (b) all or a portion of such Building is first used or occupied. Each Building and any Completed Buildings within the Project may be phased in any particular order, series, or manner as the Declarant determines, in its sole discretion. Declarant, in its sole discretion, may determine the size, scope, and duration of each phase of the Buildings within the Project. Notwithstanding anything in this Declaration to the contrary, no representation, warranty, or guaranty of any kind is made regarding whether there in fact will be any Completed Buildings located on or occupied within the Project or any Completed Buildings that will in fact contain one or more of the individual Units at any time.

1.23 "Corrective Assessment" shall mean an assessment levied against a Unit or Commercial Lot and the particular Owner in accordance with Section 6.5.

1.24 "Declarant" means RS21 Mayflower LLC, a Delaware limited liability company, and its successors or assigns, and any Person to which it shall have assigned and transferred any of its rights, interests, duties, and obligations under this Declaration by an express written assignment and assumption agreement which is recorded in the Official Records. Declarant may assign and transfer all or any portions of its rights, interests, duties, and obligations under this Declaration, or all or any portions of such rights, interests, duties, and obligations in connection with specific portions of the Project. In the event of any partial assignment, the assignee shall not be deemed the Declarant, but may exercise such rights, interests, duties, and obligations of the Declarant as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Notwithstanding any such assignment of the Declarant's rights, interests, duties, and obligations



under this Declaration (whether partially or in full), the assignee shall not be deemed to have assumed any of the existing duties, obligations, and liabilities of Declarant unless, and only to the extent that, the assignee expressly agrees to do so in writing.

1.25 “Declarant’s Period of Control” means an established period of control (including, administrative control) over the Association, during which period the Declarant or persons designated by the Declarant shall have the authority to appoint and remove some or all officers or members of the Board of Directors and to perform all other rights (for example, to amend the Project Documents) during the Declarant’s Period of Control pursuant to and in accordance with the Act. It is the intent and desire of Declarant to retain control of the Association and its activities for the maximum period of time permitted under the Act.

1.26 “Declaration” means this Declaration of Covenants, Conditions, Restrictions, and Easements for Marcella Landing, as may be amended or supplemented from time-to-time.

1.27 “Guest” means a Person or those Persons occupying a Unit under or through an Owner without compensation to the Owner and not a Transient Lodger occupying a Unit.

1.28 “Improvements” means all of the Buildings (including, those Units contained within a particular Building), Shared Components of a Building, and the Completed Buildings, Landscaping, Roadways, any applicable parking spaces and other parking areas, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails and paths (including, any applicable pedestrian, hiking, and/or biking trails and paths), exterior lighting (including, without limitation, lights for pedestrian safety), fences, walls, signs and signage improvements, utility systems and facilities (including, all culinary water, secondary water, private fire service lines, sewer systems, storm water facilities (including, the Storm Water Systems), and other utility improvements serving and applicable to the Project), and other structures, features, or improvements located on or within the Project or any particular Units and/or Commercial Lots concerned.

1.29 “Landscaping” means all outdoor areas contained within the Project that have been landscaped with lawn, flowers, ground cover, shrubbery, trees, irrigation systems, sprinkler lines and systems, gardens, berms, or similar improvements.

1.30 “Limited Common Areas and Facilities” means and refers to those Common Areas and Facilities within the Project that have been specifically designated, allocated, identified, and/or described by the Declarant as limited common areas in this Declaration or the Plat as being for the exclusive use of one (1) or more Units and/or Commercial Lots or for the exclusive use of one (1) or more Owners, but fewer than all of the Units, Commercial Lots, and Owners. No Limited Common Areas and Facilities may be severed from the ownership of the Unit or Commercial Lot to which it is appurtenant. If this Declaration describes Limited Common Areas and Facilities that are not depicted on the Plat, or if there is a dispute over the boundaries of Limited Common Areas and Facilities, the Board of Directors shall have the authority and discretion to determine the boundaries and such determination shall be final. As of the Effective Date, examples of Limited Common Areas and Facilities within the Project include those patios, decks, porches, and/or balconies and those driveways specifically designated or depicted on the Plat for the exclusive use of a Unit or a Commercial Lot. Any portion of a utility system serving

only one (1) Unit that is located outside the Unit (for example, a sanitary sewer lateral line) is part of the Limited Common Area and Facilities appurtenant to that Unit.

1.31 “Majority of the Owners” means the Owners holding a majority of the aggregate Allocated Interest at any given time.

1.32 “Manager” means the Declarant or other manager selected by the Declarant, unless the Declarant’s Period of Control has expired, on which date the Manager shall be selected by a Majority of the Owners. Declarant hereby expressly reserves the right to replace any previously selected Manager and select a new Manager during the Declarant’s Period of Control. The Manager’s rights, interests, duties, and obligations under this Declaration may be assigned at any time to the Association at any time, in the Declarant’s and Manager’s sole and absolute discretion, for the purpose of performing the Manager’s functions under this Declaration. Notice of any such assignment shall be recorded in the Official Records and shall, pursuant to Section 15.1.4, be effective as an amendment to this Declaration, with no signature other than the signature of the Declarant, the Manager, and the new Manager being required. For any period during which the Manager is an Owner other than Declarant, the rights, duties, liabilities, and obligations of the Manager under this Declaration shall be an appurtenance to the Unit (or Units) or Commercial Lot (or Commercial Lots) owned by such Owner and shall run with such Unit (or Units) or Commercial Lot (or Commercial Lots) unless and until assigned in accordance with the foregoing portion of this Section 1.32. Notwithstanding anything in this Declaration to the contrary, no representation or warranty is made regarding who will in fact be the Manager from time-to-time.

1.33 “Member” shall mean any Person holding a Membership in the Association pursuant to this Declaration as an Owner of a particular Unit or Commercial Lot situated upon or within the Project.

1.34 “Membership” shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to this Declaration and the Act. Membership in the Association shall at all times consist exclusively of Declarant (for as long as it owns any of the Project) and the Owners. Each Owner shall be a Member of the Association so long as such Person shall be an Owner and such Membership shall automatically terminate when the Member ceases to be an Owner.

1.35 “Mortgage” means a mortgage, deed of trust, or other security agreement recorded in the Official Records.

1.36 “Mortgagee” means the mortgagee under a mortgage, the beneficiary under a deed of trust, or the secured party under any security agreement recorded in the Official Records.

1.37 “Occupant” or “Occupants” means one or more Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, Guests, Transient Lodgers, or invitees.

1.38 “Official Records” means the official land records of the Wasatch County Recorder, State of Utah.

1.39 “Owner” or “Owners” means the fee owner or owners of record in the Official Records of a particular Unit or Commercial Lot situated upon or within the Project. Declarant shall be considered the record Owner of each of the Units, the Commercial Lots, and the Common Areas and Facilities for as long as it owns any portion of the Project and each of the particular Units, Commercial Lots, and Common Areas and Facilities prior to their initial conveyance by Declarant. If any particular Unit, Commercial Lot, or Common Areas and Facilities has more than one Owner, the duties, liabilities, and obligations of each such Owner under this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired fee title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.40 “Par Value” shall mean the number of points assigned to each type of Unit and Commercial Lot by this Declaration, being more particularly expressed and applied in Exhibit “D” attached hereto and incorporated in this Declaration.

1.41 “Person” or “Persons” means any natural individual, partnership, firm, estate, association, corporation, limited liability company, trust, joint venture, government, governmental subdivision or agency, or any other form of business or legal entity capable of holding title to real property.

1.42 “Plat” means, collectively, those initial subdivision and condominium plats and maps of record with the respect to the Project, including, that certain Marcella Landing Subdivision Plat, recorded in the Official Records on September 10th, 2024, as Entry No. 549863, in Book 1487, beginning at Page 1431 and that certain Marcella Landing Condominium Plat, recorded in the Official Records on September 10th, 2024, as Entry No. 549864, in Book 1487, beginning at Page 1437. The term “Plat” may also refer to any amended plat or map of record applicable to the Project which may be recorded in the future in the Official Records. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration.

1.43 “Project” means the entirety of the Units, the Commercial Lots, the Improvements, and the Common Areas and Facilities (including, the Limited Common Areas, the Roadways, and the Landscaping) located on each of the Units or the Commercial Lots, as applicable, and those other portions of the mixed-use commercial and residential project commonly referred to as “Marcella Landing”, which, may include, as and if applicable, any Additional Property that may be added to the Project in the future pursuant to an amendment to this Declaration executed and recorded pursuant to Section 15.1.1.

1.44 “Project Documents” means the Plat, this Declaration, the Bylaws, the Articles of Incorporation, and any Rules of the Association adopted from time-to-time by the Declarant and/or the Board of Directors.

1.45 “Qualified Mortgage” means a Mortgagee of which the Association and each Owner have been given written notice, including such Mortgagee’s name and address.

1.46 “Real Estate Brokerage” shall mean the Person originally designated by the Declarant for the purpose of handling all or certain marketing, listing, sale, re-sale, and related activities for the

Units in the Project. Declarant hereby expressly reserves the right to replace any previously selected Real Estate Brokerage and select a new Real Estate Brokerage. To the fullest extent permitted by law, each Owner waives any claim of monopoly and anti-trust, or related claims, based upon there being a singular Real Estate Brokerage.

1.47 “Regular Assessments for Common Expenses” shall mean an assessment levied against a Unit and Owner in accordance with Section 6.1.

1.48 “Roadway” or “Roadways” means those roadway parcels, streets, roadways, shared driveways, entrances, exits, and other related improvements specific to providing vehicular access to and throughout the Project constructed or to-be-constructed and operated within and throughout the Project for the common or joint use and benefit of the Owners, Occupants, and other Persons having any rights, title, or interests in the Project, which shall provide ingress, egress, and access to, from, and throughout the Project and each of the particular Units, Commercial Lots, and Common Areas and Facilities concerned, as applicable. As of the Effective Date, the Roadways that have been established, identified, and designated by the Declarant as part of the Common Areas and Facilities are shown and further identified on the Plat as “Horn Court (28’ Wide Private Road Right-of-Way and Public Utility Easement)” and “Shared Driveway (24’ Wide Private Road Right-of-Way and Public Utility Easement)”. Notwithstanding the foregoing, the Roadways exclude any and all portions of Horn Court that have previously been dedicated (or may be dedicated in the future) as a public right-of-way and the Commercial Lot designated on the Plat as parcel “C-2”.

1.49 “Rules” shall be those rules and regulations adopted from time-to-time by the Declarant and/or the Board of Directors pursuant to the Act. The initial Rules adopted by the Declarant and/or the Board of Directors and any subsequent amendments, additions, or replacements of the Rules need not be recorded in the Official Records. The adoption and amendment of any Rules do not require a vote of the Owners.

1.50 “Shared Components of a Building” means any applicable portions of a Building that are shared by or are reasonably necessary for the use and enjoyment of one or more Units, including, without limitation, party walls, shared walls, demising walls, common walls, footings and foundations, structural walls and components, roofs (including, heat tape and heat tape controls), security systems (if any), common sanitary sewer laterals, and other shared or common utilities (including, common metering equipment and systems).

1.51 “Short-Term Residential Use” shall mean the use, occupancy, rental, or lease, for direct or indirect remuneration, of a Unit, or portion thereof, for an effective term of less than thirty (30) calendar days. The term Short-Term Residential Use shall include transient, nightly, or hotel-type occupancy of a Unit.

1.52 “Special Assessment” shall mean an assessment levied against a Unit and Owner in accordance with Section 6.6.

1.53 “Special Declarant Rights” shall mean, to the fullest extent permitted by law and under the Act, all of those rights that Declarant reserves for itself in this Declaration, including, without limitation, the right to (i) construct any Improvements provided for in this Declaration; (ii)

maintain sales offices, construction offices, models, signs, and signage improvements advertising the Project; (iii) exercise any and all rights to easements upon, over, and to the Common Areas and Facilities, Limited Common Areas and Facilities, and other areas within the Project for the purpose of making Improvements or marketing the Units and the Commercial Lots; (iv) appoint or remove any officer or member of the Board of Directors; (v) create or designate additional Units, Commercial Lots, Common Areas and Facilities, and/or Limited Common Areas and Facilities within any applicable Additional Property; and (vi) exercise those rights specified and provided for in Section 3.1, Section 4.8, Article 12, and other sections of this Declaration.

1.54 “Taxes” means all taxes, public and private assessments (including, without limitation, assessments of any special improvement district or owners association, including the Association with regard to any Assessments), charges, and fees imposed, assessed, or levied by MIDA and any governmental or other public authority on or against the Project and/or the Units and Commercial Lots concerned.

1.55 “Transient Lodger” shall mean the Person or Persons occupying or using a Unit as an overnight or Short-Term Residential Use. A Transient Lodger may sometimes be referred to and/or considered as a “Permittee” of a Unit.

1.56 “Unconstructed Unit” shall mean a Unit that is intended, as depicted on the Plat, to be fully or partially contained within a Building and is not constructed.

1.57 “Unit” or “Units” means part of the Project, including, one (1) or more rooms within one (1) or more floors situated within a particular Building comprising part of the Project, designed and intended for independent ownership. Each Unit has been legally created and subdivided as its own independent residential unit within the Project in accordance with the Plat, or any other residential unit to be legally created and/or subdivided or that can be legally created and/or subdivided in the future (including, as Additional Property) pursuant to this Declaration. The respective Allocated Interest in the Common Areas and Facilities is appurtenant to each Unit. The Declarant anticipates that there will be various types and/or prototypes of Units within the Project. Each Unit is designated by a Unit Number (i.e., a specific number, letter, symbol, or address) on the Plat (for example, Unit 1 through Unit 50). Each Unit includes the plumbing, electrical, heating, and air-conditioning apparatus serving only that Unit (whether or not located within the Unit boundaries), which apparatus and conduits are part of the Unit. Any portion of a utility system or other apparatus serving more than one (1) Unit (for example, pipes, conduits, ducts) which is located partially within and partially outside of a particular Unit (including, without limitation, the fire protection sprinkler system) is part of the Common Areas and Facilities. Any portion of a utility system serving only one (1) Unit (for example, a sanitary sewer lateral line) that is located outside the Unit is part of the Limited Common Area and Facilities appurtenant to that Unit.

1.58 “Unit Number” shall mean the number, letter, symbol, or address (or combination of one or more of the aforementioned) that identifies a single Unit in the Project.

## ARTICLE 2 CREATION AND MANAGEMENT OF THE PROJECT



2.1 Submission. Declarant hereby submits and subjects the Project to a mixed-use commercial and residential condominium project pursuant to the Act, and in furtherance thereof, makes and declares that the Restrictions contained in this Declaration, and the Project and all of the Units, the Commercial Lots, and the Common Areas and Facilities shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to this Declaration and the Restrictions and any other rights, easements, conditions, limitations, obligations, and covenants contained in this Declaration, which shall be enforceable as equitable servitudes and constitute covenants, conditions, and restrictions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

2.2 Name. As of the Effective Date, the Project is named and shall be known as "Marcella Landing" or "Marcella Landing Townhomes".

2.3 Interpretation of Declaration and Applicability of the Act. Declarant intends that the Project shall be governed by the Act, except where (without violating the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration which are or seem contrary to the Act shall govern the Project.

2.4 Agent for Service of Process. Brian P. Rosander, Esq. at Parsons Behle & Latimer, with a business address of 201 South Main Street, Suite 1800, Salt Lake City, Utah 84111, shall be the person to receive service of process for the Project pursuant to the Act, until such time as the Board shall duly appoint a new agent and file a supplement hereto.

### ARTICLE 3 GRANT OF EASEMENTS

3.1 Initial Construction; Declarant's Reservations and Rights to Access. Declarant, for itself and its affiliates, successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, including, the Club Operator, the Manager, and the Real Estate Brokerage, reserves any and all rights, easements, and interests (and hereby declares that such rights, easements, and interests are created) as are reasonably necessary or desirable, as determined by Declarant, to enter onto and access all portions of the Project (i) during the course of the initial construction, improvement, and development of the Project (including, the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities, the Limited Common Areas, and any other of the Improvements), for the broadly construed purposes of constructing, installing, improving, developing, monitoring, and performing (or causing to be performed) the initial construction, improvement, and development of the Project, (ii) during the course of Declarant's efforts to sell, lease, manage, and operate, as applicable, any of the individual Units and/or Commercial Lots within the Project and to construct, improve, develop, and/or annex any additional phases, property, or improvements into the Project (including, the rights set forth in Article 14), (iii) during the course of Declarant performing (or causing to be performed), monitoring, or exercising any and all of Declarant's rights, interests, duties, and/or obligations under this Declaration (including, as part of Declarant's exercise of the Special Declarant

Rights), and (iv) to conduct any inspections, investigations, and to perform (or cause to be performed) any repairs, corrective measures, and/or replacements deemed necessary under any written construction warranties provided to Declarant, if any, and/or by any builder parties, contractors, or subcontractors engaged or used by Declarant in connection with the construction, improvement, and development of the Project. In addition, the Declarant shall have the right to grant and reserve easements and rights-of-way through, under, over, and across the Project for construction purposes, and for the installation, maintenance, and inspection of the utilities, utility lines, and appurtenances for public or private water, sewer, drainage, gas, electricity, cable, fiber, telephone, television reception, and other utilities or quasi-utilities. The reservations and rights in favor of Declarant to enter onto and access all portions of the Project under this Section 3.1 are intended to be broadly construed and shall include, but not be limited to, all rights, easements, and interests directly associated with and incidental or supplementary to Declarant's ownership, construction, improvement, and development of the Project and Declarant's intentions and objective of selling the individual Units contained within the Project to various purchasers and in various phases. Furthermore, the reservations and rights in favor of Declarant under this Section 3.1 may be exercised, utilized, and carried out by Declarant to the fullest extent that Declarant determines are reasonably necessary or desirable, without requiring any prior approval or consent from the Association or any particular Owner.

3.2 Access Easement. Each Unit and Commercial Lot shall have appurtenant thereto and be benefited by the Roadways and those sidewalks, walkways, trails and paths (including, any applicable pedestrian, hiking, and/or biking trails and paths), stairs, ramps, parking spaces and other parking areas located on or comprising a part of the Common Areas and Facilities that are installed, improved, and constructed for the common or joint use and benefit of the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project and such Roadways and portions of the Common Areas and Facilities shall be subject to and be burdened by a perpetual, non-exclusive right-of-way and easement for vehicular, non-vehicular, and pedestrian ingress and egress upon, over, and across those areas of the Common Areas and Facilities and Units designed for such use. The use of such right-of-way and easement shall be for the benefit of each Unit and Commercial Lot belonging to the other Owners and for the use of said Owners and its Occupants and any other Persons having any rights, title, or interests in the Project. The use of such right-of-way and easement for the Roadways and Common Areas and Facilities by the Owners of the Units and their respective Occupants and Permittees shall be limited to residential purposes, which shall include, but not be limited to, reasonable and customary vehicular, non-vehicular, and pedestrian traffic and deliveries commonly associated with residential uses. Once constructed, the Roadways and portions of the Common Areas and Facilities intended for common or joint use and benefit of the Owners and their respective Occupants and Permittees may only be modified, changed, or reconfigured with the prior written consent of the Declarant (unless the Declarant's Period of Control has expired), the Association, and the Owner or those Owners whose Common Areas and Facilities, Units, or Commercial Lots are affected by such modification, change, or reconfiguration, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such modification, change, or reconfiguration to the Roadways and any portions of the Common Areas and Facilities intended for common or joint use and benefit of the Owners, Occupants, and all other Persons having any rights, title, or interests in the Project must be performed in accordance with all applicable laws and shall not eliminate or substantially impair or adversely impact the right-of-way and easement created pursuant to this Section 3.2. The right-of-

way and easement provided for in this Section 3.2 shall not benefit and, without the written approval of the Declarant (unless the Declarant's Period of Control has expired) and the Association, may not be assigned or granted to or for the benefit of any non-Owners, non-Occupants, non-Permittees, or any other Persons who do not have any rights, title, or interests in the Project (*excluding, however*, any applicable Additional Property that may be added to the Project in the future). Except for the temporary parking of delivery and service vehicles (as permitted under Section 3.4.6), any parking of vehicles on or within the Roadways is prohibited.

3.3 Access Easement for Club Operator and Club Members. Declarant, for itself and its affiliates, successors, and assigns, reserves any and all rights, easements, and interests (and hereby declares that such rights, easements, and interests are created) as are reasonably necessary or desirable, as determined by Declarant, to grant to the Club Operator and the Club Members an access easement and associated rights to enter upon and have access over, through, and across the Roadways and those sidewalks, walkways, stairs, ramps, and other designated areas located on or comprising a part of the Common Areas and Facilities in the Project for ingress to and egress from those Buildings, Units, and/or Commercial Lots comprising the Club Amenities. In addition, Declarant, for itself and its affiliates, successors, and assigns, reserves any and all rights, easements, and interests (and hereby declares that such rights, easements, and interests are created) for the benefit of the employees, contractors, subcontractors, service providers, guests, and invitees of the Club, the Club Operator, and the Club Members to enter upon and have access over, through, and across the Roadways and those sidewalks, walkways, stairs, ramps, and other designated areas located on or comprising a part of the Common Areas and Facilities in the Project for ingress to and egress from those Buildings, Units, and/or Commercial Lots comprising the Club Amenities.

3.4 Easements for Common Areas and Facilities. The Common Areas and Facilities contained within the Project (and to the extent any Common Areas and Facilities are applicable to or are located within any of the Buildings, the Units, and/or the Commercial Lots) are specifically designated for and shall be used for the following enumerated purposes related to the ownership, uses, and activities conducted on the Units and the Commercial Lots and subject to the limitations and restrictions that any such use and activities shall not (i) be unreasonable or inconsistent with the uses and activities commonly found in a mixed-use commercial and residential project, (ii) violate any applicable laws, or (iii) adversely impact the ownership, uses, operation, and/or activities of any other Owners and their Occupants and Permittees within the Project:

3.4.1 Ingress and Egress. Ingress and egress by vehicles, non-vehicles, and pedestrians, including, upon, over, and across those areas designated and identified on the Plat as Roadways (including each area referenced as "Horn Court (28' Wide Private Road Right-of-Way and Public Utility Easement)" and "Shared Driveway (24' Wide Private Road Right-of-Way and Public Utility Easement)").

3.4.2 Support. Each Unit, Building, Commercial Lot, and the Common Areas and Facilities shall have an easement for lateral and subjacent support from every other Unit, Building, Commercial Lot, and the Common Areas and Facilities.



**3.4.3 Public and Private Utilities.** Installation, maintenance, and operation of public and private utilities, utility services, and related facilities for the Common Areas and Facilities and/or the buildable areas for any particular Buildings, Units, Commercial Lots, and other Improvements located within the Project and on each individual Unit and/or Commercial Lot, including, without limitation, those public or private utility easements depicted, granted by, and described on the Plat. The public and private utilities, utility services, and related facilities applicable to this Section 3.4.3 shall include, without limitation, the installation, maintenance, and operation of vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located within those designated public and private utility easement areas created by and shown on the Plat and shall be installed below the surface of the Common Areas and Facilities, or the surface of any other above-ground improvements located thereon; *provided, however*, that in any event, (i) all of the foregoing permitted public and private utilities, utility services, related facilities, and installations which are located above the surface of the Common Areas and Facilities shall be placed so as not to unreasonably interfere with, restrict, impair, or impede and does not adversely impact other uses of Common Areas and Facilities or any buildable areas applicable to any Buildings, Units, Commercial Lots, or other Improvements located within the Project and on each individual Unit and/or Commercial Lot, and (ii) no such permitted public and private utilities, utility services, related facilities, and installations which must be located above the surface of the Common Areas and Facilities shall be placed upon any Unit or Commercial Lot without the prior written consent of the Owner of such Unit or Commercial Lot, which consent shall not be unreasonably withheld, conditioned, or delayed. In addition, use of the public and private utility easements established by or contemplated in this Section 3.4.3 are subject to the terms, conditions, and limitations of the Plat, this Declaration, and any other separate instruments granting or creating certain specific public and private utility easements within the Project, as applicable. All public and private utility easements established by or contemplated in this Section 3.4.3 may be modified, expanded, reconfigured, and/or relocated in accordance with the Plat, this Declaration (including, as part of Declarants exercise of Special Declarant Rights), or as may otherwise be permitted by any other separate instruments granting or creating such specific utility easements.

**3.4.4 Comfort and Convenience.** Comfort and convenience of the Owners of each Unit and Commercial Lot within the Project by installation, maintenance, and operation of those minor convenience facilities, such as lighting, Landscaping, mailboxes, and benches, which each Owner may from time-to-time deem appropriate to construct or permit to be constructed within its individual Unit and/or Commercial Lot; *provided, however*, that no such minor convenience facilities shall unreasonably interfere with, restrict, impair, or impede other uses of the Common Areas and Facilities or the building areas located on any other Units and/or Commercial Lot and such minor convenience facilities shall be maintained, operated, and insured by the Owner of the Unit and Commercial Lot (at such Owner's sole cost and expense) on which they were installed in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with the terms, conditions, and standards of this Declaration.

**3.4.5 Temporary Construction Activities.** Construction, maintenance, repair, replacement, rearrangement, and remodeling of any particular Buildings (including, any Shared Components of a Building) and Improvements within the Project, including, any of the Landscaping,

Roadways, and other improvements in the Common Areas and Facilities not substantially affecting or changing the Common Areas and Facilities, except as permitted or required in this Declaration. All such work under this Section 3.4.5 shall be temporary in nature and conducted in the most expeditious manner reasonably possible to minimize the interference with use of Common Areas and Facilities and the ownership and intended use and enjoyment by the Owners on each of their individual Units and Commercial Lots and their respective Occupants and/or Permittees of the Building or Buildings within the Project and the work under this Section 3.4.5 shall be diligently prosecuted to completion. In connection with all such work or construction performed under this Section 3.4.5 within the Project, incidental encroachment upon the Common Areas and Facilities may occur as a result of the use of ladders, scaffolding, store-front barricades, and similar facilities resulting in the temporary obstruction of portions of the Common Areas and Facilities, all of which are permitted under this Declaration so long as their use is kept within reasonable requirements and good business practices of construction work, is expeditiously pursued, and does not materially and adversely impact the ownership and residential use and enjoyment by the other Owners on each of their individual Units and Commercial Lots or their respective Occupants and/or Permittees of the Building or Buildings within the Project. The rights to use the Common Areas and Facilities, as provided in this Section 3.4.5, include the rights for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided in this Section 3.4.5 and the temporary storage of materials being utilized in connection with such construction, subject to all of the other terms of this Section 3.4.5 and this Declaration, *provided, however*, no material, equipment, or storage facilities may be located upon the Roadways or upon any other Common Areas and Facilities of any Units and/or Commercial Lots without the express written consent of the Owner of such Units and/or Commercial Lots, which consent shall not be unreasonably withheld, conditioned, or delayed.

3.4.6 Service and Delivery Vehicles. Ingress, egress, and temporary parking of delivery and service vehicles for the delivery of goods, wares, merchandise, furniture, fixtures, supplies, and equipment, and the rendition of services to any Owner to and from those sidewalks, walkways, paths, stairs, and ramps located within or near the Common Areas and Facilities or in any other areas that exclusively serve any particular Building for loading and unloading, which shall include those areas designated and identified on the Plat as "Shared Driveway (24' Wide Private Road Right-of-Way and Public Utility Easement".

3.4.7 Foundations, Footings, Overhangs, and Canopies. Installation, repair, replacement, and maintenance of: (i) Building foundations and footings located within the Project; (ii) Building canopies and canopy support columns located within the Project; (iii) Shared Components of a Building located within the Project (including, without limitation, shared walls, common walls, structural walls and components, roofs and roof components, heat tape, and heat tape controls); and (iv) pilasters and other Building columns or pillars, extending from any portion of the Buildings over, onto, under, and into the Common Areas and Facilities.

3.4.8 Minor Encroachments. Minor encroachments of Building walls, overhangs, support columns, canopies, and eaves from any portion of the Buildings over, onto, under, and into the Common Areas and Facilities.

3.5 Storm Drainage Easements. Each Unit, Commercial Lot, and Building within the Project shall have appurtenant thereto and be benefited by and each Unit, Commercial Lot, and Building within the Project shall be subject to and be burdened by, a perpetual, non-exclusive right-of-way and easement to discharge surface storm water drainage and/or storm water runoff from each Unit, Commercial Lot, and Building constructed within each Unit, Commercial Lot, and Building over, upon, under, and across the Common Areas and Facilities and Roadways located on or adjacent to each Unit and Commercial Lot, including, but not limited to, those areas designated on the Plat as storm water drainage and detention areas or public or private utility easements, upon the following terms and conditions: (i) the grades and the storm water systems for the overall Project shall remain in strict conformance with the purpose and intent of the original, approved storm water and utility plans adopted by the Declarant (the "Approved Storm Water Plans"), and (ii) no Building or Commercial Lot may be altered or permitted to be altered in a manner where the surface of the applicable Common Areas and Facilities and Roadways, or portions thereof, located on such Building or Commercial Lot or the applicable portions of the Storm Water Systems constructed over, upon, under, and across such Building or Commercial Lot if such alteration is not in strict conformance with the Approved Storm Water Plans or would materially and adversely increase the flow of surface storm water drainage, storm water runoff, storm water detention, or surface water onto an adjacent Unit, Commercial Lot, Building, or other Improvements either in the aggregate or by directing the flow of surface storm water drainage, storm water runoff, storm water detention, or surface water in a manner that would materially and adversely impact any Unit, Commercial Lot, Building, or other Improvements. All surface water collection facilities, storm drainage lines, drains, gutters, downspouts, berms, swells, detention areas, and other drainage facilities and systems (collectively, the "Storm Water Systems") located over, upon, under, and across each of the Units, the Commercial Lots, the Buildings, and the Common Areas and Facilities shall be maintained by the Association in accordance with the terms, conditions, and standards of Article 5 of this Declaration. The Storm Water Systems, as further set forth in the Approved Storm Water Plans, have been designed to serve and benefit all of the Units, the Commercial Lots, and the Buildings within the Project. The rights to use, connect to, and benefit from the Storm Water Systems and those Common Areas and Facilities and Roadways associated with the Storm Water Systems, as provided in this Section 3.5, include the rights of the Association to maintain, repair, expand, relocate, and replace, as necessary and appropriate, those storm drainage lines, systems, and detention areas from and connecting to each of the Units, the Commercial Lots, the Buildings, and the Common Areas and Facilities onto and across those portions of the Units, the Commercial Lots, the Buildings, and the Common Areas and Facilities as is necessary to safely and properly use the Storm Water Systems (*provided, however*, such storm drainage lines, systems, and detention areas shall, to the extent possible, be placed in any designated utility areas or utility easements within the Common Areas and Facilities and Roadways and shall not unreasonably and adversely affect the use and operation of the Units, the Commercial Lots, or the Buildings). No modification, change, or reconfiguration (including, the expansion or relocation of the Storm Water Systems) that materially and adversely affects the grading, orderly discharge, flow, detention, and operation of the Storm Water Systems shall be made to the Storm Water Systems without the prior written consent of the Declarant (unless the Declarant's Period of Control has expired), the Association, and the Owner or those Owners whose Units and/or Commercial Lots are affected by such modification, change, or reconfiguration, which consent shall not be unreasonably withheld, conditioned, or delayed. Prior to making any such modification, change, or reconfiguration

(including, any expansion or relocation of the Storm Water Systems) to the Storm Water Systems, sufficiently detailed plans, specifications, and drawings must be submitted to the Declarant, the Association, and the Owner or those Owners whose Units and/or Commercial Lots are affected for approval. All costs and expenses associated with any modification, change, or reconfiguration of the Storm Water Systems (including, the expansion or relocation of the Storm Water Systems) will be paid by the Association (as part of the Common Expenses payable by the Owners under Article 6) if such modification, change, or reconfiguration is for the common or joint use and benefit of the Owners and their respective Occupants and Permittees or paid by the Owner proposing and making such modification, change, or reconfiguration.

3.6 Creation of Easements and Equitable Servitudes. Subject to the Restrictions provided for elsewhere in this Declaration, there are hereby created permanent, non-exclusive easements and equitable servitudes appurtenant to, for the benefit of, and over, across, in, under, and through the Common Areas and Facilities for the uses and purposes set forth in this Article 3. There are hereby also further created non-exclusive easements and equitable servitudes for ingress, egress, and access to the Common Areas and Facilities located over, along, and under the Common Area and Facilities for the purpose of effectuating any necessary repairs, maintenance, and replacement of the Common Areas and Facilities located on the Units, the Commercial Lots, and/or the Buildings as provided in this Declaration.

3.7 Walls, Fences, or Barriers. Except as part of the initial construction, improvement, and development of any Common Areas and Facilities and Improvements and any party, shared, structural, or common walls specific to the Buildings (including, the Shared Components of a Building) and except as contemplated elsewhere in this Declaration, no walls, fences, barriers, or other improvements located outside of the Buildings of any sort or kind shall be constructed or erected in the Project, or any portion thereof, which shall prevent, eliminate, or substantially impair or adversely impact the use or exercise of any of the easements granted in this Declaration, or the free access and movement of Owners and their respective Occupants and Permittees, including, without limitation, vehicular, non-vehicular, and pedestrian traffic over the Common Areas and Facilities and between the various Units, Commercial Lots, and Buildings; *provided, however*, that curb stops and other reasonable traffic controls, including, without limitation, stop signs, directional barriers, parking stops, and traffic medians, as may be necessary or desirable to guide and control the orderly flow of traffic consistent with the Roadways, may be installed by the Declarant and/or the Association to the extent such controls do not materially and adversely affect the Common Areas and Facilities or any other Units, Commercial Lots, Buildings, or Owners.

3.8 No Merger. Notwithstanding an Owner's ownership of more than one Unit or Commercial Lot within the Project, the easements granted under this Article 3 shall burden and benefit each Unit and Commercial Lot individually, in accordance with the terms of this Declaration, without merger as a result of such common ownership, and upon conveyance of a Unit and/or Commercial Lot so that such Unit and/or Commercial Lot ceases to be under common ownership, neither the Owner conveying said Unit or Commercial Lot nor the Owner acquiring said Unit or Commercial Lot shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Declaration is recorded in the Official Records.



**ARTICLE 4**  
**DEVELOPMENT AND OPERATION OF PROJECT**

4.1 Association Approval. After the initial construction, improvement, and development of any Common Areas and Facilities and Improvements and except for any subsequent repairs, maintenance, and replacement of any applicable Common Areas and Facilities located on the Units and/or the Commercial Lots in accordance with Article 5 of this Declaration, no excavation, grading, or similar work in the Project shall be commenced, no further Improvements in the Project shall be constructed or installed, and no alteration, refurbishing, or repainting of the exterior of any Improvements shall be performed, unless and until complete plans (including, without limitation, exterior elevations and exterior building materials, colors and signage) have first been submitted to, and approved in writing by, the Declarant (unless the Declarant's Period of Control has expired) and the Association, with such approval from the Association not being unreasonably withheld, conditioned, or delayed. The Association may (but is not obligated to) use a committee approach for such review. Such plan submission and approval requirements shall not apply to repairs, maintenance, or alterations of pre-existing Improvements that do not (a) affect the size or the external design or appearance of such Improvements (including, the exterior elevations, exterior building materials, colors, and signage), (b) change the permitted use of such Improvements, or (c) change the then-existing configuration or uses of any Completed Buildings or Improvements. In determining whether to approve or disapprove plans submitted, the Association shall use its reasonable, good faith judgment to assess and assure that all Improvements are of good quality and sound construction, functionally harmonize with existing surroundings and Improvements, and comply with the other requirements of this Declaration. The Association may, however, approve plans that entail a variance from such requirements so long as in the reasonable, good faith judgment of the Association such variance is necessary or appropriate. The fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to the Association shall be approved or disapproved by the Association in writing within thirty (30) calendar days after submission. If the Association fails to take any action within such 30-day period, the Association shall be deemed to have approved the plans submitted; *provided, however*, that to the extent that such plans violate any applicable laws (including, any valid and enforceable ordinances, development codes, and building requirements enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable) or contemplate any variance from the requirements of this Declaration, the failure of the Association to take action in a timely manner shall be deemed a disapproval of such plans as to any proposed variance and/or violation of any applicable laws. Any disapproval of such plans by the Association shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by the Association of any submitted plans shall be solely for the Association's own benefit, and the Association has not reviewed any submitted plans for compliance with any laws, ordinances, regulations, rules, permits, codes, or governmental requirements and the Association expressly disclaims any responsibility to do so. Review or approval by the Association of any submitted plans shall not be deemed to be or to result in any warranty, representation, or conclusion by the Association relative to the technical adequacy of such plans or the quality, safety, soundness, suitability for a particular purpose, or compliance of the Improvements described by such plans. The Association shall not be liable for any damages by reason of any action, inaction, approval, or disapproval by the Association with

respect to any request made pursuant to this Declaration so long as such action, inaction, approval, or disapproval did not occur as a result of the Association's gross negligence or willful misconduct.

4.2 Use; Nuisances and Offensive, Unsightly, and Unsafe Conditions. No part of the Project may be used or occupied by any Owners or their respective Occupants or Permittees for any use that violates the Act or any applicable laws, ordinances, regulations, rules, permits, or governmental requirements that are inconsistent with this Declaration. All Units and Buildings shall be used only for residential purposes (with respect to the Units) and commercial purposes (with respect to the Commercial Lots) that are consistent with the then applicable zoning, development codes, building requirements, and permitted uses for the Project. All Buildings, Units, and Commercial Lots contained within the Project shall be:

4.2.1 of a first-class quality construction and nature designed for those uses and purposes consistent with the applicable zoning, development codes, building requirements, and permitted uses for the Project;

4.2.2 architecturally and aesthetically compatible with all other then-existing Completed Buildings in the Project;

4.2.3 owned, constructed, occupied, used, and operated in such a manner as will preserve the fire insurance rating on any other then-existing Completed Buildings within the Project; and

4.2.4 constructed in compliance with all applicable MIDA, state, county, and municipal subdivision, building, zoning, and other laws, ordinances, regulations, rules, permits, codes, or governmental requirements, including, to the extent applicable, the Act.

In addition, no part of the Project or any Unit or Commercial Lot may be used or occupied by any Owners or their respective Occupants or Permittees for any noxious, illegal, offensive, nuisance, hazardous, unsightly, or unsafe activities (including, the ownership or use of any unlawful or unsafe objects, animals, or conditions). Without limiting the generality of the foregoing, no unreasonable noise or disturbances may be permitted on or within any Unit and/or Commercial Lot. Recreational vehicles, trailers, mobile homes, trucks, boats, tractors, campers, snowmobiles, and other similar vehicles must be parked in the designated garage for each Unit and shall not be parked anywhere with the Project, unless the Association has designated one or more specific areas within the Project for the parking of such aforementioned vehicles and other objects and the parking of such vehicles and other objects are permitted by and compliant with the then applicable zoning for the Project and any applicable Recorded Documents. Notwithstanding the foregoing, the Commercial Lots may park such vehicles and other objects on any applicable parking spaces, parking areas, and other parking improvements constructed and/or provided for on the Commercial Lots. Any outdoor clothes lines or other clothes drying/hanging facilities (or the like) are prohibited throughout the Project and there shall be no outside laundering or drying of clothes, unless approved in advance by the Association. No Owner shall unlawfully use, deposit, store, dispose, transport, or release any hazardous substances, hazardous wastes, pollutants, contaminants, or other unsafe substances on any part of the Project.

4.3 Construction and Maintenance Requirements.

4.3.1 Initial Construction. Prior to or in conjunction with the initial construction and completion of any Building, the Common Areas and Facilities (including, any applicable Landscaping and Roadways) shall be constructed by the Declarant or the Owner of the Building concerned in accordance with this Declaration; *provided, however*, the initial construction and completion of the Common Areas and Facilities may be phased and sequenced in any particular order, series, or manner as the Declarant determines, in its sole discretion. Roadways (including, all areas designated and identified on the Plat as “Shared Driveway (24’ Wide Private Road Right-of-Way and Public Utility Easement)”) shall be surfaced with asphalt or concrete, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage into those portions of the Storm Water Systems connected to and servicing each Building and Commercial Lots. After the initial construction and completion of any Common Areas and Facilities (including, any applicable Landscaping and Roadways), the same shall not be demolished, removed, relocated, or altered in any material respect without the prior written consent of the Declarant (unless the Declarant’s Period of Control has expired), the Association, and the Owner or those Owners whose Units and/or Commercial Lots are affected by such demolition, removal, relocation, or alteration, which consent shall not be unreasonably withheld, conditioned, or delayed. No Improvements shall be built in such a manner as to adversely affect the structural integrity or fire rating of any other Improvements in the Project.

4.3.2 No Interference. All work performed in the construction, maintenance, repair, replacement, alteration, or expansion of any Units or Commercial Lots by the Owners shall be effected as expeditiously as reasonably possible and in such a commercially reasonable manner as not to unreasonably interfere with, obstruct, diminish, or delay (other than on a temporary basis for the shortest amount of time possible after taking into consideration commercially reasonable circumstances) (i) access to or from the Project and any particular Building, Unit, and/or Commercial Lot, or any parts thereof, or to or from any Roadways or public or private utility easements benefitting the Project, (ii) vehicular parking in any driveways or other designated parking spaces or parking areas within the Project (including, any parking spaces or parking areas within the Commercial Lots), or (iii) the delivery and receiving of any goods, wares, merchandise, furniture, fixtures, supplies, and equipment or the rendition of any services by a particular Owner and its Occupants or Permittees in the Project. Staging for the construction, maintenance, repair, replacement, alteration, or expansion of any Units and/or Commercial Lots by the Owners, including, without limitation, the storage of building materials and supplies and the parking of construction vehicles and equipment, shall be on the Unit or Commercial Lot being improved or on some other location within the Project designated by Declarant (unless the Declarant’s Period of Control has expired, and in such event, such location shall be designated by the Association). Unless otherwise specifically stated in this Declaration, the Owner contracting for the performance of such work shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, Common Areas and Facilities, or other Improvements damaged, disrupted, or destroyed in the performance of such work. In the event any of the Buildings, Common Areas and Facilities, or other Improvements are damaged, disrupted, or destroyed in the performance of any Owner’s work under this Article 4, the Declarant and/or the Association may elect, in their discretion, but shall not have the obligation, to perform or cause to be performed (for example, through contractors or subcontractors selected by Declarant and/or the Association) all repair, restoration, and other work necessary to such Buildings, Common Areas and Facilities, or other

Improvements at the sole cost and expense of the Owner originally contracting for such work and causing such damage, disruption, or destruction. In the event that any duty, responsibility, and/or obligation of the Association under this Article 4 or elsewhere in this Declaration arises or is caused by the action or inaction, willful misconduct, omission, or negligent act or acts of any Owner or group of Owners or their respective Occupants or Permittees, the cost and expenses for such damage, maintenance, repair, and/or replacement may be assessed solely to the responsible Owner or Owners by way of a Special Assessment.

**4.3.3 No Liens.** No Owner shall permit any liens to stand against any Unit, Commercial Lot, Common Areas and Facilities, or Improvements, or any other portions of the Project other than the Owner's Unit or Commercial Lot for any work done or materials furnished or services rendered in connection with the performance of any work by or at the direction or for the benefit of such Owner or its Occupants or Permittees. Such Owner shall within thirty (30) calendar days cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable laws, failing which the Owner of the Unit, the Commercial Lot, or the Common Areas and Facilities or Improvements (including, the Declarant and the Association, each as to their respective interests) that is encumbered with a lien in violation of this Section 4.3.3 shall have the right, but not the obligation, at the defaulting Owner's expense, to transfer said lien to bond or to remove said lien. Such defaulting Owner shall indemnify, defend (with counsel selected by the indemnified Owner, the Declarant, and/or the Association), and hold harmless the other Owners, the Declarant, the Manager, and the Association from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and costs), liens, claims of lien, judgments, proceedings, and causes of action, arising out of or in any way connected with the performance of any work under this Article 4, unless caused by the negligent or willful act or omission of the indemnified party.

**4.3.4 Unit Owner's Maintenance Responsibility.** Each Owner of a Unit shall keep, maintain, repair, and replace all interior spaces, features, components, and improvements constituting a part of such Owner's Unit in good and attractive order, reasonably clean, orderly and usable condition, and in a good state of maintenance and repair, excluding any Common Areas and Facilities situated on and within such Owner's Unit (if any) that the Association is responsible for maintaining, repairing, and replacing pursuant to Article 5 of this Declaration. The following items are expressly included within the scope and area of Owner's responsibility: (a) all interior walls, non-structural components, and other interior spaces, features, components, and improvements of any Unit (*excluding, however*, any Shared Components of a Building), (b) all individual utility services and connections (such as power, light, gas, hot and cold water, individual water metering, heating, refrigeration and air conditioning systems) within or servicing such Owner's Unit, (c) all fixtures, minor convenience facilities (as further stated in Section 3.4.4 above) and security systems within or applicable to such Owner's Unit, (d) all individual heating, refrigeration and air conditioning systems, ducts, and equipment within or servicing such Owner's Unit, (e) all individual plumbing systems, pipes, equipment, and components thereof, and (f) all individual electrical systems, conduits, equipment, and components thereof. If an item is not included within the foregoing description of the scope and area of Owner's responsibility and such item is located within a Unit, then the presumption shall be that such item is the responsibility of the Owner to maintain, repair, and replace, unless otherwise expressly stated in this Declaration or otherwise determined in writing by the Board of



Directors of the Association. Each Owner shall be responsible for and timely pay all individual utility costs and utility services provided to such Owner's Unit, *excluding, however*, any costs for shared or common utility services that are not separately billed or metered and are provided to the Building or Buildings as a whole. Any shared or common utility services shall be paid by the Association and such costs and expenses shall be included within the definition of "Common Expenses" set forth in Section 1.21. No provision of this Declaration shall be construed to mean that any Building or individual Unit or combination of Units cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner or group of Owners raze or remove any Building, individual Unit or Commercial Lot, or combination of Units and/or Commercial Lots, or if any Building, individual Unit or Commercial Lot, or combination of Units and/or Commercial Lots are damaged or destroyed, within a reasonable time after such occurrence the Owner or applicable group of Owners of the individual Unit or Commercial Lot, or combination of Units and/or Commercial Lots on which such Building is or was located shall either cause such Building, individual Unit or Commercial Lot, and/or combination of Units and/or Commercial Lots to be replaced or restored or cause all debris to be removed and the site of such Building, individual Unit or Commercial Lot, and/or combination of Units and/or Commercial Lots to be left in a level, clean, safe, and slightly condition pending construction of another Building, individual Unit or Commercial Lot, or combination of Units and/or Commercial Lots.

4.4 Alterations by Owners of Units. After the initial construction, improvement, and development of any Unit, no Owner of a Unit shall make any additions, alterations, or improvements in or to its Unit unless and until complete plans have first been submitted to, and approved in writing by, the Declarant (unless the Declarant's Period of Control has expired) and the Association, with such approval from the Association not being unreasonably withheld, conditioned, or delayed. All proposed additions, alterations, or improvements to a Unit shall be made in compliance with all valid and enforceable ordinances, development codes, building requirements, laws, rules, and regulations enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable; and any conditions and good construction practices imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, etc. No addition, alteration, or improvement to a Unit may in any manner adversely affect any particular Building (including, any Shared Components of a Building) and Improvements within the Project, without the prior written consent of the Association and the Owner or those Owners whose Units or Building (including, any Shared Components of a Building) are affected by such addition, alteration, or improvement, which consent shall not be unreasonably withheld, conditioned, or delayed. An Owner of a Unit who makes or causes to be made any such additions, alterations, or improvements shall hold the Association, the Declarant, and all other Owners harmless from and indemnify them against any liability or damage to the Units, the Commercial Lots, the Buildings, or other portions of the Project, and costs and expenses arising therefrom that arises as a result of such additions, alterations, or improvements.

4.5 Alterations by Owners of Commercial Lots; Maintenance Responsibility. The Owners of the Commercial Lots shall have the right, but not the obligation, to make any alterations, additions, and improvements to any such Commercial Lots without the approval of the Association or any other Owners within the Project. The Owner or Owners of the Commercial Lots who elect to make (or causes to be made) any such additions, alterations, or improvements

shall hold the Association, the Declarant, and all other Owners harmless from and indemnify them against any liability or damage to the Units, the Commercial Lots, the Buildings, or other portions of the Project, and costs and expenses arising therefrom that arises as a result of such addition, alteration, or improvement. In addition, the Owners of the Commercial Lots shall keep, maintain, repair, and replace any improvements constituting a part of such Owner's Commercial Lot in good and attractive order, reasonably clean, orderly and usable condition, and in a good state of maintenance and repair, excluding any Common Areas and Facilities situated on and within such Owner's Commercial Lot (if any) that the Association is responsible for maintaining, repairing, and replacing pursuant to Article 5 of this Declaration.

4.6 Common or Shared Wall Penetrations, Generally. For all Buildings where an Owner owns two (2) or more Units within a particular Building which share one (1) or more party walls, shared walls, demising walls, common walls, footings and foundations, structural walls, and/or other shared components specific to the Building (including, the Shared Components of a Building), such Owner upon approval of the Association and the Declarant (unless the Declarant's Period of Control has expired) may remove or alter a partition between or shared component of the Owner's Units, even if the partition or shared component is entirely or partly within the Common Areas and Facilities; or create an aperture to the adjoining Units or portion of a Unit; provided, however, an Owner of such Units may not take such action if the action would (i) impair the structural integrity or mechanical systems of the applicable Building (including, the Shared Components of a Building) or either of the Units; (ii) reduce the support or integrity of any portion of the Building (including, the Shared Components of a Building), the Common Areas and Facilities, the Limited Common Areas and Facilities, or another Unit; or (iii) constitute a violation of UTAH CODE ANN. § 10-9a-608, any valid and enforceable ordinances, development codes, building requirements, laws, rules, and regulations enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable, or good construction practices. The Board of Directors may require the Owner of two adjacent Units to submit, at such Owner's expense, a registered professional engineer or registered architect's opinion stating that a proposed joinder, combination, or change to the Owner's Units will not (i) impair the structural integrity or mechanical systems of the applicable Building (including, the Shared Components of a Building) or either of the Units, (ii) reduce the support or integrity of any portion of the Common Areas and Facilities, Limited Common Areas and Facilities, or another Unit, or (iii) constitute a violation of UTAH CODE ANN. § 10-9a-608, any valid and enforceable ordinances, development codes, building requirements, laws, rules, and regulations enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable, or good construction practices. The Board of Directors may require an Owner of two adjacent Units to pay all of the legal and other expenses of the Association related to a proposed joinder, combination, change, or alteration to the Units or Building under this Section 4.6. The joining of Units by such a wall penetration does not change any Assessments or voting rights attributable to the Owner's Units prior to the wall penetration.

4.7 Master Plat and Recorded Documents. The Project is situated within a portion of the MIDA Master Development Plat, recorded on June 30, 2020, as Entry No. 480155, in Book 1299, beginning on Page 1122 in the Official Records, together with any amendments thereto (as amended, the "Master Plat") and is subject to the terms, conditions, limitations, restrictions, reservations, rights, easements, obligations, and covenants contained in the Master Plat, as

applicable. In addition to the Master Plat, the Plat, and this Declaration, the Project is subject to the provisions of: (a) the terms and conditions of that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Mountainside Village and Resort, dated August 20, 2020, and recorded on August 21, 2020, as Entry No. 483149, in Book 1308, beginning at Page 27, in the Official Records (the "Master Declaration"), as such Master Declaration has been or may be modified or amended at any time and from time-to-time; and (b) the terms and conditions of that certain Mountainside Resort Master Development Agreement, dated August 19, 2020, and recorded on August 20, 2020, as Entry No. 483120, in Book 1307, beginning at Page 1743, in the Official Records (the "Master Development Agreement"), as such Master Development Agreement has been or may be modified or amended at any time and from time-to-time (collectively, the aforementioned documents are referred to as the "Recorded Documents"). Any terms, conditions, rights, reservations, easements, covenants, conditions, restrictions, obligations, assessments, and other matters applicable to the Project as granted by or established under the Recorded Documents may be amended, modified, or relocated in accordance with the terms and conditions of the Recorded Documents. In addition to the Recorded Documents, all future or ongoing development, use, and operation of the Project is subject to all valid and enforceable ordinances, development codes, and building requirements enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable. The Project is located within the boundaries of MIDA is subject to all rules, regulations, requirements, fees, assessments, and charges of MIDA.

4.8 Sales, Post-Sale Services, and Related Purposes; Display of Signage. Declarant, as part of the Special Declarant Rights, for itself, its affiliates, successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, including, the Manager and the Real Estate Brokerage, reserves the exclusive right as reasonably required or desired by Declarant, to: (1) market, advertise, and sell the Units to the initial Owners; (2) maintain customer relations and provide post-sales services to Owners; (3) display signs on the Buildings and other areas of the Common Areas and Facilities and to erect, maintain, and operate, for sales and administrative purposes, model units and a customer relations, customer service, and sales office complex on the Common Areas and Facilities; and (4) show the Units that have not already been conveyed by an original deed. Declarant also reserves the right to lease any unsold Units. Declarant's rights to display signs on the Buildings and other areas of the Common Areas and Facilities pursuant to this Section 4.8 shall include the display of any "for sale", "for lease", or other advertising and marketing signage, materials, flags, banners, displays, billboards, or other advertising devices of any kind of the Declarant and any of its affiliates, successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel (including, the Manager and the Real Estate Brokerage), and any of their designees, including, without limitation, any general contractors, subcontractors, materials providers, and/or lenders, during the course of the initial construction, improvement, and development of the Project and during the course of Declarant's efforts to sell, lease, and manage any of the individual Units within the Project.

## ARTICLE 5 ASSOCIATION'S DUTIES REGARDING COMMON AREAS AND FACILITIES

5.1 Generally. The Association shall timely perform or cause to be performed (for example, through the Manager or contractors or subcontractors hired by the Association or the Manager) the duties, responsibilities, benefits, and obligations set forth in this Article 5, for which the Association shall be reimbursed in accordance with this Declaration. The Association shall not be deemed to be conducting a “for-profit” business of any kind, and all funds received by the Association shall be held and applied by the Association for the benefit of the Project and the Owners in accordance with this Declaration, the Project Documents, and the Act. All commercially reasonable costs, expenses, fees, charges (including, Additional Charges), and other amounts (including, appropriate reasonable reserves) incurred, paid by, or payable by the Association in connection with the performance and carrying out of the duties, responsibilities, benefits, and obligations set forth in this Article 5, whether or not such costs, expenses, fees, charges, or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Expenses payable by the Owners under Article 6. Notwithstanding anything in this Declaration to the contrary, the Association shall have no duty, responsibility, or obligation to perform, and no liability for failure to perform, any duty, responsibility, or obligation set forth in this Declaration to be performed or carried out by the Association, if the funds to pay for such duty, responsibility, or obligation are insufficient or have not been timely received by the Association pursuant to this Declaration.

5.2 Maintenance of Common Areas and Facilities. After the Common Areas and Facilities and applicable improvements thereon are initially constructed, improved, and developed, the Association shall keep or cause to be kept (for example, through the Manager or contractors or subcontractors hired by the Association or the Manager) the Common Areas and Facilities in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class mixed-use commercial and residential project. The foregoing shall include, without limitation: (i) the maintenance, repair, and replacement, as necessary and appropriate, of all Landscaping, Roadways, and other Improvements located on or comprising a part of the Common Areas and Facilities; (ii) except as contained in and governed by the Recorded Documents, maintaining, repairing, restriping, and resurfacing, as necessary, all Roadways (including, each of those areas designated and identified on the Plat as “Horn Court (28’ Wide Private Road Right-of-Way and Public Utility Easement)” and “Shared Driveway (24’ Wide Private Road Right-of-Way and Public Utility Easement)” and paved surfaces (which may be paved or surfaced with asphalt or concrete); (iii) keeping the Common Areas and Facilities adequately lighted; and (iv) maintaining, repairing, and replacing, as necessary, all shared or common utilities, utility systems, utility facilities, common water metering equipment, and related improvements on or underneath the Common Areas and Facilities and/or the Roadways, including, without limitation, the Storm Water Systems and any other shared or common utilities serving the Common Areas and Facilities and/or the Roadways; except to the extent (i) such utilities and utility systems are owned and maintained directly by the owners or operators of such utilities and utility systems, and (ii) any portions of the Roadways have previously been dedicated (or may be dedicated in the future) as a public right-of-way. The determination of when it is necessary and appropriate to maintain, repair, and/or replace any portion of the Common Areas and Facilities shall be made by the Association, in its commercially reasonable discretion. Except to the extent owned by owner(s) or operator(s) of utility facilities or as otherwise set forth in the Recorded Documents, all culinary water, secondary water, private fire service lines, sewer systems (including, sanitary sewer lateral line, main lines, and other sewer facilities), Storm



Water Systems, and other utility improvements and metering systems located on, serving, or comprising a part of the Common Areas and Facilities, the Limited Common Area and Facilities (for example, the sanitary sewer lateral line servicing a particular Unit) and/or the Roadways as established under any agreements with such owner(s) or operator(s) of the utility facilities or as otherwise established by this Declaration are intended to be privately owned, operated, and maintained by the Association. The recordation of the Plat and this Declaration are not intended to effect a dedication of any portions of the aforementioned utility facilities, systems, and/or improvements to the public or for any public use. It shall be the responsibility of the Association to ensure that construction, operation, maintenance, repair, and any replacement of such private utility facilities, systems, and/or improvements are performed in accordance with all existing agreements with the owner(s) or operator(s) of the utility facilities, systems, and/or improvements and all valid and enforceable ordinances, development codes, and building requirements enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable. Any shared or common utility services that are provided to an individual Building, more than one of the Buildings (but not all of the Buildings), or all of the Buildings as a whole shall be paid by the Association and such costs and expenses shall be included within the definition of "Common Expenses" set forth in Section 1.21. If any shared or common utility services are separately metered to an Owner's Unit or Commercial Lot, then each Owner shall be responsible for and shall timely pay those costs and expenses that are separately billed or metered to such Owner's Unit or Commercial Lot.

5.3 Benefits to Owners. In addition to the Association's rights, interests, duties, and obligations under Section 5.2 regarding the maintenance and repair of the Common Areas and Facilities, the Association will provide certain benefits to the Owners of the Units (or cause such benefits to be performed through the Manager or contractors or subcontractors hired by the Association), which benefits shall include:

5.3.1 Building Exteriors. The Association will keep the following portions of the Completed Buildings in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair (replacing such portions, as necessary and appropriate): (a) the exterior finished surfaces of the exterior walls, doors, windows, window frames, and window casings; (b) the soffit and fascia; (c) the roofs (including, heat tape and heat tape controls); (d) gutters and downspouts; and (e) exterior lighting and fixtures (including, replacement of light bulbs); *provided, however*, the benefits provided by the Association under this Section 5.3.1 will not extend to any fixtures, minor convenience facilities (as further stated in Section 3.4.4 above), or other items or systems that each Owner is responsible for maintaining, repairing, and replacing pursuant to Section 4.3.4 above.

5.3.2 Painting. The Association will paint, repaint, stain, and restain, as necessary and applicable, the exterior surfaces of the Completed Buildings (including, those patios, decks, porches, and/or balconies comprising part of the Limited Common Areas and Facilities).

5.3.3 Snow Removal. The Association will use commercially reasonable efforts to cause snow and ice to be removed from those portions of the Common Areas and Facilities where Roadways, sidewalks, walkways, trails and paths (including, any applicable pedestrian, hiking, and/or biking trails and paths), stairs, and ramps are located within the Project; *provided, however*, the Owners

within the Project agree and acknowledge that ownership within a residential community and townhome project located in mountainous areas involves certain inherent risks and inconveniences. These risks and inconveniences include, but are not limited to: (a) dripping water onto and around the Common Areas and Facilities and from rooftops of the Buildings and other Improvements from snow melt; (b) snow and ice build-up on, around, and from the Common Areas and Facilities and sliding from rooftops of the Buildings, the Improvements, and other surfaces during winter months; and (c) other risks and inconveniences arising from the sometimes variable weather conditions in or around the Rocky Mountains. In addition, the Owners within the Project agree and acknowledge that the Association's responsibility for snow removal shall not arise until at least two inches (2") of snow has accumulated and each Owner shall be solely responsible for any removal of snow on any private areas or Limited Common Areas and Facilities falling within or applicable to such Owner's Unit (for example, any patios, decks, porches, and/or balconies compromising part of the Limited Common Areas and Facilities).

5.3.4 Trash Removal. The Association will provide a reasonably sufficient number of trash bins, receptacles, and/or dumpsters in certain designated areas within the Project, which trash bins, receptacles, and/or dumpsters may be enclosed by certain walls, fences, barriers, or other improvements, in the Association's commercially reasonable discretion or as otherwise required by law. In addition, the Association will cause the trash bins, receptacles, and/or dumpsters within the Project to be emptied.

5.3.5 Security Systems. The Association will keep the security cameras and security system initially installed on or applicable to the Units and the Completed Buildings in a good state of maintenance and repair (replacing such cameras and systems, as necessary and appropriate).

The determination of when it is necessary and appropriate to provide the aforementioned benefits to the Owners, including, the level and frequency of service and when certain areas are in need of maintenance, repairs, replacement, painting, and/or snow removal, shall be made by the Association, in its commercially reasonable discretion.

5.4 Insurance on Common Areas and Facilities. If the Association determines that it is commercially reasonable to do so and to the extent reasonably available or determines that it is otherwise required under the Act, the Association shall maintain (i) blanket property insurance or guaranteed replacement cost insurance (or some other comparable insurance) in connection with all Common Areas and Facilities and any applicable Improvements (including, any Shared Components of a Building) owned, used, or maintained by the Association, insuring against those risks of direct physical loss commonly insured against, including fire and extended coverage perils, and (ii) liability insurance (or some other comparable insurance) insuring the Association and any employees, representatives, officers, Board of Directors, and agents of the Association as the Association may designate against all claims for and covering all occurrences commonly insured against bodily injury, death, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Facilities and any applicable Improvements. Such insurance shall be carried with a responsible company authorized to do business in Utah and shall afford at least the coverage provided by a "combined single limit" of not less than those amounts required in the Recorded Documents and, if the Recorded Documents do not govern, not

less than Two Million Dollars (\$2,000,000) per occurrence, and not less than Four Million Dollars (\$4,000,000) in the aggregate, for bodily injury, death and property damage, which may be increased by the Association in its commercially reasonable discretion from time-to-time. All insurance costs and expenses shall be part of the Common Expenses payable by the Owners under Article 6. Each Owner shall be deemed an insured person under any liability insurance policy obtained by the Association, but only for and to the extent any liability arises from such Owner's interest in the Common Areas and Facilities and any applicable Improvements owned by the Association, the maintenance, repair, or replacement of the Common Areas and Facilities and any applicable Improvements owned by the Association, and such Owner's corresponding Membership interest in the Association.

**5.5 Damage of Common Areas and Facilities.** If all or any part of the Common Areas and Facilities, the Improvements (including, any Shared Components of a Building), or the improvements and systems comprising the Common Areas and Facilities are damaged or destroyed through casualty, the Association shall, subject to the payment obligations set forth below and as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned. Prior to such rebuilding and restoration, each Owner shall, within thirty (30) calendar days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Allocated Interest of such Owner by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by the Association). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration. Alternatively, the Association may collect the actual or projected cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration. In lieu of collecting the respective Allocated Interest from all Owners for rebuilding and restoring the Common Areas and Facilities or the Improvements that have been damaged or destroyed, the Association may, in its commercially reasonable discretion, determine that the damaged or destroyed Common Areas and Facilities or the Improvements only service or benefit certain Units, Commercial Lots, or Buildings within the Project and elect to collect the costs to rebuild and restore such damaged or destroyed Common Areas and Facilities or the Improvements from the Owners of the benefitted Units, Commercial Lots, or Buildings.

**5.6 Condemnation of Common Areas and Facilities.** If all or any part of the Common Areas and Facilities, the Improvements (including, any Shared Components of a Building), or the improvements and systems comprising the Common Areas and Facilities are taken through condemnation or eminent domain proceedings or are conveyed to a condemning authority under threat of condemnation or eminent domain, the entire condemnation award or proceeds shall be paid to the Association, except for any portion of such award or proceeds directly allocable to the fair market value of the Unit or Units (as opposed to the Improvements or systems comprising the Common Areas and Facilities on the land), which portion shall be paid directly to the Owner(s) of such Unit or Units that was taken through condemnation or eminent domain or otherwise conveyed. The Association shall, as soon as reasonably possible, restore the remaining Common Areas and Facilities, the Improvements (including, any Shared Components of a Building), or the improvements and systems comprising the Common Areas and Facilities in compliance with all valid and enforceable ordinances, development codes, and building requirements enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable; *provided, however,*

the Association shall have no obligation to perform any restoration, and no liability for failure to perform, any duty, responsibility, or obligation set forth in this Section 5.6 to be performed or carried out by the Association, if the condemnation award and proceeds available to pay for such restoration are insufficient or are not made available to and received by the Association. Any such restoration by the Association shall be of equal or similar quality in materials and workmanship as the original Common Areas and Facilities and applicable Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Expenses. Any condemnation award or proceeds for the Common Areas and Facilities, the Improvements, or the improvements and systems comprising the Common Areas remaining after such restoration has been completed shall be paid to the Owner(s) of the land concerned.

**5.7 Default of Association; Self-Help and Takeover.** If the Association fails to perform any duty, responsibility, or obligation under this Article 5 and such failure continues for a period of sixty (60) calendar days after written notice of such failure is given to the Association by any Owner that has been materially and adversely impacted, or if the performance of such duty, responsibility, or obligation would reasonably require more than sixty (60) calendar days, if the Association fails to commence such performance within such 60-day period or thereafter diligently prosecute such performance to completion, the Owner giving such notice may, on written notice to the Association and each other Owner throughout the Project, perform such duty, responsibility, or obligation in the stead of the Association; *provided, however*, the scope of any such Owner's self-help and takeover rights to perform any duty, responsibility, or obligation of the Association shall be limited to the performance of those duties, responsibilities, or obligations that are expressly addressed in the Owner's written notice and which directly benefit those Unit or Units or those Commercial Lot or Commercial Lots actually owned by such Owner (including, the Building or Buildings which contain such Units and the Common Areas and Facilities and applicable Improvements which benefit or service such Units and/or Commercial Lots). Such Owner shall be reimbursed for all commercially reasonable costs, expenses, fees, and other amounts actually incurred in connection with such Owner's self-help, takeover, and performance of the Association's duties, responsibilities, or obligations by all Owners in accordance with each Owner's Allocated Interest in the same manner as if such duty, responsibility, or obligation had been performed by the Association.

**5.8 Limits on Liability.** From the time that any Common Areas and Facilities and/or the Limited Common Areas and Facilities, or any portions thereof, are constructed, made available, and put into use for the enjoyment of the Owners pursuant to and as provided for in this Declaration, the Owners shall be and remain wholly free and clear of any and all liability to, or claims by, all owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Areas and Facilities, the Limited Common Areas and Facilities, or any of their improvements, fixtures, and facilities; inasmuch as the control, operation, management, use, and enjoyment of the Common Area and Facilities and the Limited Common Areas and Facilities shall be within, under, and subject to the Association – and not Owners. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Areas and Facilities and the Limited Common Areas and Facilities to continuously inspect the same for any defects or perils or other unsafe



conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Areas and Facilities and the Limited Common Areas and Facilities shall use, enjoy, and visit, the same at their own risk and peril.

## ARTICLE 6 COMMON EXPENSES

6.1 Budget. At least annually, the Board of Directors of the Association shall prepare (or cause to be prepared) and submit to each Owner within the Project at a meeting of the Association a proposed or adopted budget for the Common Expenses for the following year (which proposed or adopted budget shall include a reserve fund line item and amount to be placed into a reserve fund). The Board of Directors shall, as part of the budgeting process, determine the amount of the Regular Assessments for Common Expenses and any other Assessments to be paid by each Owner. In formulating the Association's budget each year, the Association shall include a reserve fund line item in an amount the Board of Directors determines, based on a reserve analysis, to be prudent, in the Board of Directors business judgment or as otherwise required under the Act. Each Owner shall promptly and in good faith review such proposed or adopted budget and any requisite approval shall not be unreasonably withheld, conditioned, or delayed. Each Owner shall have forty-five (45) calendar days after receipt of such proposed or adopted budget to give the Association written notice of its approval or disapproval. If any Owner fails to give notice of its approval or disapproval within such 45-day period, such Owner shall be deemed to have automatically approved such budget. Any disapproval of such budget shall be in writing and accompanied by a sufficiently and reasonably detailed explanation for such disapproval. If a Majority of the Owners approve or are deemed to have approved any budget submitted by the Association, such budget shall be deemed to be approved, acceptable, and adopted by the Association and Owners for that given calendar year. If a Majority of the Owners do not approve or are not deemed to have approved such budget, the Association and all disapproving Owners shall reasonably cooperate to address and resolve the sufficiently and reasonably detailed reasons for such disapproval as soon as reasonably possible so as to arrive at an acceptable budget that is approved or deemed approved by a Majority of the Owners. Until an acceptable budget for the following year has been approved or deemed approved by a Majority of the Owners, the budget that the Board of Directors last adopted will continue as the governing budget. Whenever a budget is materially and substantively revised as a result of any Owner's disapproval, the Association shall submit (or re-submit, as the case may be) such revised budget to each Owner, and the foregoing process (along with any other submittal and adoption processes provided for in the Act) shall be repeated, having the same time periods for approval and disapproval.

6.2 Collection. The Association is expressly authorized by each Owner to incur all costs, expenses, fees, charges (including, Additional Charges), and other amounts included within the definition of "Common Expenses" set forth in Section 1.21 and any other costs and expenses provided for in the Act, and each Owner shall contribute such Owner's Allocated Interest for Common Expenses in the manner described in this Section 6.2. The Association shall make reasonable, good faith efforts to collect from each Owner such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses on a monthly, quarterly, or other

periodic basis as the actual amount of the Allocated Interest for Common Expenses and Regular Assessments for Common Expenses becomes known (in which event the Allocated Interest for Common Expenses and Regular Assessments for Common Expenses shall be due and payable within thirty (30) calendar days after the delivery of such invoice); or (b) invoice each Owner in advance based on the Association's reasonable, good faith estimate of the Allocated Interest for Common Expenses and Regular Assessments for Common Expenses for the period concerned, which estimate shall be provided to each Owner at least annually. If the Association adopts the second alternative (i.e. invoice in advance), each Owner shall pay such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses in equal installments on the first (1<sup>st</sup>) day of each month, and within ninety (90) calendar days after the end of each calendar year, the Association shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses for such calendar year. If such final statement reveals that the monthly installments actually paid by an Owner aggregate less than such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses for such calendar year, such Owner shall pay the full amount and difference owing to the Association within thirty (30) calendar days after such final statement is furnished. If such final statement reveals that an Owner's monthly installments actually paid aggregate more than such Owner's Allocated Interest for Common Expenses and Regular Assessments for Common Expenses for such calendar year, the excess amount shall, at the option of the Association, either be returned to such Owner or be applied by the Association as a credit against the amounts next due from such Owner under this Section 6.2. Any amount required to be paid under this Section 6.2 that is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Association for any payment not made within ten (10) calendar days after the date when due. Such late charge is payable not as a penalty, but in order to compensate the Association for the additional expenses and administrative efforts involved in handling the delinquent payment. Acceptance by the Association of any payment from an Owner that is less than the entire amount then due and owing shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Association that relate to the Common Expenses and Assessments shall be open to examination and audit by any Owner on at least twenty (20) calendar days prior written notice to the Manager.

6.3 Capital Improvement Assessments. In addition to Regular Assessments for Common Expenses, the Board of Directors may charge, levy, and assess in any fiscal year a capital improvement assessment ("Capital Improvement Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any new construction, repair, or replacement of a capital improvement upon the Common Areas and Facilities and/or the Limited Common Areas. All amounts collected as Capital Improvement Assessments shall be considered part of the "Assessments" and may only be used for capital improvements and shall be deposited by the Board of Directors in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.

6.4 Benefitted Assessments. The Board of Directors may charge, levy, and assess as part of the overall Assessments, a benefitted assessment ("Benefitted Assessment") against a particular Unit or combination of Units for the costs and expenses incurred or to be incurred by the Association to cover the costs and expenses, including, overhead and administrative costs, of providing benefits, items, or services to a particular Unit or Units or the Owners, Occupants, and/or Permittees of such Units, which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner. Benefitted Assessments include, but are not limited to, the following:

6.4.1 request of the Owner or its Occupants and/or Permittees pursuant to a menu of special services which the Board of Directors may from time-to-time authorize, which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner;

6.4.2 the covering on any cost or expense attributable to one (1) or more Owners, but less than all the Owners as certified by the Board of Directors;

6.4.3 the truing up of expenses under Section 6.2;

6.4.4 the levy of an Assessment against the Owners of Units or the Commercial Lots as certified by the Board of Directors; and

6.4.5 Any other assessments implicitly or expressly identified as a benefitted assessment in this Declaration.

6.5 Corrective Assessments. The Board of Directors may charge, levy, and assess as part of the overall Assessments, a corrective assessment ("Corrective Assessment") against a Unit and its Owner to reimburse the Association for:

6.5.1 costs and expenses incurred in bringing an Owner or its Unit, or both, into compliance with the provisions of this Declaration, the Articles, the Bylaws, the Rules and any other Project Documents or into compliance with any valid and enforceable ordinances, development codes, and building requirements enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable;

6.5.2 Except as covered and provided in Section 5.2 and Section 5.3 above, the costs and expenses associated with the maintenance, repair, or replacement of Limited Common Area assigned to an individual Unit, if any; and

6.5.3 attorneys' fees, interest, and other charges (including, Additional Charges) relating thereto as provided in this Declaration.

6.6 Special Assessments. In addition to all other Assessments, a special assessment ("Special Assessment") may be charged, levied, and assessed by the Board of Directors as follows:

6.6.1 Board Approved. The Board of Directors may levy a Special Assessment to pay the costs of any one (1) or more of the following:

- (a) An extraordinary cost and/or expense required by an order of a court;
- (b) To protect the Common Areas and Facilities, the Limited Common Areas and Facilities, and any improvements thereon, against foreclosure; and
- (c) To cover other short falls, or other needs approved by the Board of Directors as being reasonably necessary to the protection or preservation of the Project.

6.6.2 Approved by Association. Special Assessments must be approved by a Majority of the Owners that are represented in person, by proxy, or by ballot who are entitled to cast a vote at a meeting duly called and held by the Board of Directors for such purpose pursuant to this Declaration and/or the Bylaws, which may involve:

- (a) the replacement or improvement of the Common Areas and Facilities, the Limited Common Areas and Facilities, or improvements thereon; and
- (b) an extraordinary expense necessary to repair or maintain the Common Areas and Facilities, the Limited Common Areas and Facilities, or any improvements thereon for which the Association is responsible.

6.7 Default; Association's Takeover Rights. If any Owner fails to perform any duty, responsibility, or obligation under this Declaration (other than the payment of money) and such failure continues for a period of thirty (30) calendar days after written notice of such failure is given to such Owner by the Association, or if the performance of such duty, responsibility, or obligation would reasonably require more than thirty (30) calendar days, if such Owner fails to commence such performance within such 30-day period or thereafter fails to diligently prosecute such performance to completion, the Association may, upon written notice to such Owner, takeover and perform such obligation in the stead of such Owner, or exercise any other right or remedy against such Owner existing under the Act or otherwise available at law or in equity. The Association shall be reimbursed by such Owner, upon demand, for all costs, expenses, fees, and other amounts actually incurred (including, Additional Charges) in connection with the Association's takeover and performance of the defaulting Owner's duties, responsibilities, or obligations and/or the exercise of other rights or remedies against such Owner, together with interest on such costs, expenses, fees, and other applicable amounts, both before and after judgment, at the rate of eighteen percent (18%) per annum.

6.8 Lien. If not paid when due, the amounts payable under this Article 6 and any other Assessments or other amounts payable to the Association under this Declaration may be secured by a lien against the delinquent Owner's Unit(s) and/or Commercial Lot(s). Such lien shall be enforced pursuant to the Act and evidenced by a notice of lien recorded against the delinquent Owner's Unit(s) and/or Commercial Lot(s) by the Association in the Official Records. A copy of such notice of lien shall be given to the delinquent Owner and any then applicable Mortgagee holding a Mortgage covering such Owner's Unit and/or Commercial Lot within ten (10) calendar days following recordation of the notice of lien. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner, a description of the property subject to such lien (i.e. the Owner's Unit(s) and/or Commercial Lot(s) and any other applicable property, if any), and any other information required to be provided to the delinquent Owner

pursuant to the Act, and shall be signed and acknowledged by an authorized signatory of the Association or the Association's legal counsel. Any such lien may be enforced by the Association by way of a non-judicial foreclosure (as though the lien were a deed of trust) or a judicial foreclosure (as though the lien were a mortgage) in the same manner as is provided under the Act or any other applicable law for the foreclosure of mortgages or trust deeds covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such notice of lien is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility right-of-way and easement (including, public and private utility easements) existing at the time such notice of lien is recorded, including, those set forth and established under the Plat, (d) the interests of each Permittee under any then applicable lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded. This Section 6.8 does not prohibit the Association from bringing a legal action against any delinquent Owner to recover any amounts payable under this Article 6 and any other amounts and Assessments payable to the Association under this Declaration. As permitted under the Act, the Board of Directors may terminate a delinquent Owner's rights to receive certain utility service for which the Owner pays as a Common Expense or to access and use certain recreational facilities (if any) associated with the Project.

6.9 Certain Obligations and Rights. The obligations of each Owner under Section 6.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Association. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Areas and Facilities, by abandonment of such Owner's Unit(s) or Commercial Lot(s) or any Improvements on such Owner's Unit(s) or Commercial Lot(s), or by waiver of any of the services or amenities provided for in this Declaration. Any legal action to recover one or more monetary judgments for any amount due under this Declaration may be maintained without foreclosing or waiving the Assessments lien described in Section 6.8 above. All remedies set forth in this Section 6.9 are cumulative and are in addition to any remedies otherwise available under the Act or otherwise as at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

## ARTICLE 7 ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ENFORCEMENT OF ASSESSMENT LIEN

7.1 Association as Enforcing Body. Except as otherwise set forth in this Declaration (for example, in instances where Declarant has rights to enforce certain provisions of this Declaration), the Association, as the agent and representative of the Owners and Members, shall have the exclusive right to enforce the provisions of this Declaration (or cause this Declaration to be enforced, for example, through the Manager).

7.2 Association's Enforcement Remedies. If any Owner or Member fails to pay any of the Assessments when due, the Association (or the Manager, if caused to be enforced through the Manager) may enforce the payment of the Assessments and the Assessments lien provided for in



Section 6.8 above, by taking one or more of the following actions, concurrently or separately (and by exercising any of the remedies set forth in this Declaration, the Association does not prejudice or waive its right to exercise any other remedy available under this Declaration or otherwise available at law or in equity):

7.2.1 Bring an action at law and recover judgment against the Owner or Member personally obligated to pay the Assessments;

7.2.2 Foreclose the Assessments lien provided for in Section 6.8 against the Unit or Units and/or Commercial Lot or Commercial Lot(s) owned by such Owner or Member in accordance with the then prevailing Utah law relating to the foreclosure of realty Mortgage(s) (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Title 38 of the UTAH CODE, as amended from time-to-time, or any other means permitted by law, and the Unit(s) or Commercial Lot(s) may be redeemed after foreclosure sale, if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates Jeremy C. Reutzel, Attorney-at-Law, Bennett Tueller Johnson & Deere, located at 3165 East Millrock Drive, Suite 500, Salt Lake City, Utah 84121, as trustee ("Trustee"), and Declarant hereby conveys and warrants pursuant to Section 57-1-20 of the UTAH CODE and Section 57-8-45 of the Act to Trustee, with power of sale, each individual Unit or combination of Units and each individual Commercial Lot or combination of Commercial Lots, and all of the improvements therein and thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration. Each Owner, by virtue of accepting a deed or title to any individual Unit or Commercial Lot or combination of Units and Commercial Lots within the Project (whether from Declarant or another party) and, to the fullest extent permitted by law, also hereby conveys and warrants to Trustee, with power of sale, each individual Unit and Commercial Lot or combination of Units and Commercial Lots acquired by such Owner and all of the improvements therein and thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth in this Declaration. The Board of Directors may, at any time and from time-to-time, designate one or more successors in the place of Trustee, in accordance with the provisions of the Act and/or applicable Utah law for the substitution of Trustee under deeds of trust. Such Trustee, and any successors, shall not have any other right, title, or interest in the individual Unit or Commercial Lot or combination of Units and Commercial Lots beyond those rights and interests necessary and appropriate to foreclose any liens against such Unit or Commercial Lot or Units and Commercial Lots arising pursuant hereto. In any such foreclosure, the Owner of the individual Unit or Commercial Lot or combination of Units and Commercial Lots being foreclosed shall be required to pay the costs and expenses of such proceeding (including, reasonable attorneys' and appraisal fees), and such costs and expenses shall be secured by the Assessment lien being foreclosed. The Association (or the Manager, if the Association has elected for the foreclosure to be carried out through the Manager) shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all of the individual or combination of Units and Commercial Lots purchased at such sale.

7.2.3 Notwithstanding the subordination of the Assessments lien, as further described and set forth in Section 6.8 above, the delinquent Owner and/or Member shall remain personally liable for the Assessments and all related costs after such ownership has ceased and/or such Member's membership is terminated by foreclosure or deed-in-lieu of foreclosure or otherwise.

7.3 Priority of Lien. The Assessments lien provided for throughout this Declaration and further described in Section 6.8 shall be subject and subordinate to each of those items specified in Section 6.8, but shall be prior and superior to any and all other charges, liens, encumbrances, or interests, whether recorded or unrecorded at the time such notice of Assessment lien is recorded, which hereafter in any manner may arise or be imposed upon each individual Unit or Commercial Lot or combination of Units and Commercial Lots being foreclosed. The sale or transfer of any individual Unit or Commercial Lot or combination of Units and Commercial Lots by a delinquent Owner and/or Member shall not affect the Assessment lien provided for in this Declaration.

## ARTICLE 8 TAXES, INSURANCE, AND INDEMNIFICATION

8.1 Taxes. Each Owner shall pay, prior to delinquency, any and all Taxes imposed, assessed, or levied by MIDA, Wasatch County, and any other applicable governmental, quasi-governmental, service district, or other public authority on or against such Owner's Unit(s) and/or Commercial Lot(s), unless the collection of such Taxes and any sale or forfeiture of such Unit(s) and/or Commercial Lot(s) for non-payment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Unit or Commercial Lot is not imposed, assessed, levied, or otherwise taxed as an independent parcel for tax purposes, the Taxes allocable to such Unit or Commercial Lot shall be an equitable proportion of the Taxes for all of the land within the Project and Improvements included within each relevant tax parcel assessed, such proportion to be determined from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. The Association shall pay, prior to delinquency, any and all Taxes imposed, assessed, or levied by any governmental, quasi-governmental, service district, or other public authority on or against the Common Areas and Facilities.

8.2 Insurance. Each Owner shall secure and maintain liability insurance providing coverage against bodily injury, death, and property damage occurring, or by reason of activities, on or about each Owner's Unit(s) or Commercial Lot(s) within the Project. In addition, each Owner may, at its own discretion, secure and maintain any desired insurance covering the personal contents and personal property located within such Owner's Unit(s) or Commercial Lot(s). All insurance policies required to be obtained under this Declaration shall be issued by a carrier licensed or otherwise authorized to transact business in the State of Utah and shall be with companies having a rating of not less than A-VIII in Best's Insurance Guide. The liability insurance policies to be secured and maintained by each Owner shall afford at least the coverage provided by a "combined single limit" of not less than those amounts required in the Recorded Documents and, if the Recorded Documents do not govern, not less than One Million Dollars (\$1,000,000) per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, death, and property damage, and shall name the Association as an additional insured. Each Owner shall, upon request, furnish the Association with a certificate of insurance issued by its insurer

evidencing that insurance is in force that complies with the requirements of this Section 8.2. All insurance policies required to be obtained under this Section 8.2 shall provide that such policies may not be canceled or substantially modified without at least thirty (30) calendar days prior written notice to all of the insureds and the Owner's designated additional insureds (including, the Association). The insurance coverage requirements set forth in this Section 8.2 provide the minimum level of acceptable coverage. The Association and the Owners may obtain additional coverage as such parties may determine necessary or as may be required under other contracts or documents to which they are party (including, by way of example, a Mortgage). The Association makes no representation or warranty that the minimum amount of insurance required by this Section 8.2 will be sufficient to protect the Owners from any claims or incidences dealing with bodily injury, death, or property damage occurring, or by reason of activities, on or about the Project. In addition, unless otherwise required by law, the insurance secured and maintained by the Association under this Declaration shall not cover any personal contents or personal property of the Owners or their respective Permittees.

8.3 Indemnification. Each Owner shall indemnify, defend (with counsel selected by the Association, the Declarant, and each indemnified Owner, respectively), and hold harmless the Association and the other Owners within the Project, the Declarant, and the Manager from and against any and all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of a legal action, on appeal or otherwise), liabilities, judgments, and liens, of whatever kind or character, which are caused by the indemnifying Owner, including, without limitation, those caused by the use, deposit, storage, disposal, transportation, or release of any hazardous substances, hazardous wastes, pollutants, or contaminants on any part of the Project by (a) the indemnifying Owner, (b) any Occupants and/or Permittees leasing or occupying the Unit(s) or Commercial Lot(s) owned by the indemnifying Owner, or (c) any agent, employee, contractor, invitee, or licensee of either the indemnifying Owner, Occupants, or any Permittees leasing or occupying the Unit(s) or Commercial Lot(s) owned by the indemnifying Owner.

## ARTICLE 9 PROHIBITED OR RESTRICTED OWNERSHIP AND USES

9.1 Prohibited Uses. Unless approved by the Declarant (unless the Declarant's Period of Control has expired) and the Association in advance and in writing, which approval may be given, conditioned, or withheld by the Declarant and the Association in their sole, absolute, and unfettered discretion, any use, occupancy, or operation within the Project that is not consistent, compliant, and/or compatible with (i) the Project as a mixed-use commercial and residential project, (ii) the current residential uses (with respect to the Units) and commercial purposes (with respect to the Commercial Lots) and any other purposes, uses, or activities consistent with the permitted uses and applicable zoning for the Project, and/or (iii) Article 4 of this Declaration (including, but not limited to, compliance with the Recorded Documents), is strictly prohibited.

9.2 Antennas; Satellite Dishes. Unless approved by the Declarant (unless the Declarant's Period of Control has expired) and the Association in advance and in writing, which approval may be given, conditioned, or withheld by the Declarant and the Association in their sole, absolute,

and unfettered discretion, or except to the extent required to be permitted by any applicable laws, no Owner, Occupant, or Permittee of a Unit may install, or authorize the installation of, any antenna, satellite dish, or other transmitting or receiving apparatus on any of the Buildings, Shared Components of a Building, or in or about any other portions of the Project, except to the extent that said apparatus: (a) is located wholly within the physical boundaries of said Owner's Unit; and (b) is not visible from outside the Unit in which it is located. Notwithstanding the foregoing, however, in no event shall any Owner, Occupant, or Permittee of a Unit, without having obtained said prior written consent of the Declarant and the Association, have any rights with regard to making any of said installations that exceed the bare minimum rights required to be permitted by any applicable laws. Notwithstanding the foregoing, nothing in this Section 9.2 shall prevent or prohibit an Owner of a Commercial Lot from installing, or authorizing the installation of, any antenna, satellite dish, or other transmitting or receiving apparatus on any portion of said Owner's Commercial Lot.

9.3 Business Uses. Unless approved by the Declarant (unless the Declarant's Period of Control has expired) and the Association in advance and in writing, which approval may be given, conditioned, or withheld by the Declarant and the Association in their sole, absolute, and unfettered discretion, no Unit shall be used for commercial or other business purpose, except for Short-Term Residential Use and an Owner, Occupant, or Permittee of a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all valid and enforceable ordinances, development codes, zoning, land use, licensing, and permitting requirements for the Unit enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Project; and (iv) the business activity is consistent with the character of the Project and does not constitute a noxious, illegal, nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners, Occupants, or Permittees in the Project.

9.4 Fractional Ownership Prohibited. It is the intent of Declarant and the Association that any and all fractional interest, timeshare interest, time period regimes, and/or timesharing, interval ownership, private residence club, and/or other shared ownership regimes or comparable use programs are strictly prohibited with respect to any and all Units within the Project. No Owner of a Unit shall have the right to submit all or any portions of a Unit within the Project to any fractional, timeshare, time period, interval, private residence club, and/or other shared ownership regimes or comparable use programs. For the avoidance of doubt, the Club and the Club Amenities are a permitted use within the Project.

9.5 Animals. No animals or birds of any kind shall be raised, bred, or kept in any Units, Commercial Lots, or on other portions of the Project; except that no more than two (2) usual and ordinary household pets (such as dogs, cats, or birds), may be kept, provided that such pets are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Any dog permitted under this Section 9.5 shall be kept on a leash at all times that such dog is in the Common Areas and Facilities. Owners shall use commercially reasonable efforts to prevent their pets from soiling or damaging any portions of the Common Areas and

Facilities or other areas of the Project and in the event a pet does soil or damage any portion of the Common Areas and Facilities or other areas of the Project, the Owner (and/or guest of such Owner responsible for the pet) responsible for such pet shall immediately clean-up after the pet and repair any damage to the Common Areas and Facilities and the Project. Declarant and/or the Board of Directors may adopt Rules concerning the ownership, keeping, safety, and security of pets and animals within the Project, including, by way of example, certain noise restrictions related to pets, and Declarant and/or the Board of Directors may designate certain areas within the Common Areas and Facilities in which pets are permitted or prohibited.

9.6 Garbage and Trash Disposal. Except as part of the Association's responsibility under Section 5.3.4 above, each Owner of a Unit is responsible for keeping all rubbish, trash, and garbage produced by each Owner and their respective Occupants and Permittees contained and stored within sanitary garbage cans or containers kept in the designated garage for each Unit and shall be responsible for seeing that such garbage, trash, and containers are taken out for removal and collection. Rubbish, trash, and/or garbage shall not be permitted to remain or accumulate outside of the Unit, the Building, or any other portions of the Project. No garbage cans or containers may be kept outside of the Units.

9.7 Storage; Outdoor Furniture. No storage of any kind shall be permitted on or within the Limited Common Areas and Facilities within the Project, including, those patios, decks, porches, and/or balconies and those driveways specifically designated for the exclusive use of a Unit. Patio furniture and portable barbecue grills in good working order and condition may be used and maintained on those patios, decks, porches, and/or balconies specifically designated for the exclusive use of a Unit.

## **ARTICLE 10**

### **EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES**

10.1 Title and Mortgagee Protection. The default or breach of this Declaration shall not entitle any Owner, Occupant, or other Person to cancel, rescind, or otherwise terminate its duties, liabilities, and obligations under this Declaration. No default or breach of this Declaration shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but the limitations, restrictions, reservations, rights, easements, conditions, obligations, and covenants contained in this Declaration shall be binding upon and effective against the Owner of any Unit or Commercial Lot, or any portion thereof, whose title thereto is acquired by judicial or non-judicial foreclosure, trustee's sale, or otherwise (like an arrangement or proceeding in lieu of foreclosure).

10.2 Mortgagee Protection.

10.2.1 Obligations of Mortgagee. Unless and until it enters into possession of or acquires title to all or any portions of one or more Units and/or Commercial Lots within the Project, as applicable, pursuant to judicial or non-judicial foreclosure, trustee's sale, or any other arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting one or more Units or Commercial Lots within the Project shall have no duties,



liabilities, and/or obligations to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning any consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

10.2.2 Notices; Right to Cure. Any Owner, on delivering to any other Owner any notice, demand, or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to the notifying Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional ten (10) calendar days and, in the case of non-monetary defaults, an additional thirty (30) calendar days; *provided, however*, that if a non-monetary default reasonably requires more than thirty (30) calendar days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion.

10.2.3 Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Unit or Units and/or Commercial Lot or Commercial Lots covered by its Mortgage, to the extent encumbered by and permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Unit or Units and/or Commercial Lot or Commercial Lots covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with such Unit or Units and/or Commercial Lot or Commercial Lots encumbered by an applicable Mortgage.

10.2.4 Recognition. Upon request, the Association agrees to execute, acknowledge, and deliver to any Qualified Mortgagee a commercially reasonable instrument prepared by the Qualified Mortgagee concerned (*provided, however*, such instrument must be reviewed and approved in advance by the Association), acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the rights and benefits of this Section 10.2.

10.2.5 Estoppel. The Association shall, within fifteen (15) calendar days after the request of any Owner, execute and deliver (or cause to be executed and delivered through the Manager) to the requesting Owner a commercially reasonable estoppel certificate in favor of the requesting Owner and such other persons (like third-party purchasers) as the requesting Owner shall designate setting forth the following:

- (a) that, to the actual knowledge of the Association (with no duty to discover or investigate), such Owner is not in default under this Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;
- (b) that, to the actual knowledge of the Association, this Declaration is in full force and effect and has not been modified or amended, except as may be disclosed in the Official Records or as set forth and disclosed in such estoppel certificate;
- (c) any commercially reasonably requested information regarding Common Expenses and the Assessments lien recorded pursuant to Section 6.8, to the extent that the Common Expenses and such Assessments lien relates to such Owner's Unit or Commercial Lot; and
- (d) such other commercially reasonable and relevant information as the requesting Owner may reasonably request.

The requesting Owner's Mortgagees and any such other persons (like third-party purchasers) shall be entitled to rely upon any estoppel certificate executed by the Association or the Manager pursuant to this Section 10.2.5.

## ARTICLE 11 CLUB MEMBERSHIP AND OPERATIONS

11.1 Mandatory Club Membership. Each Owner (other than Declarant) of a Unit within the Project, by acceptance of a deed or otherwise acquiring title to (or control over) such Owner's respective Unit, agrees and acknowledges that it shall be required to become a Club Member and hold a membership in the Club. Prior to ownership of a Unit within the Project, each Member shall submit a full and complete Club Membership Application and such submission shall include any application fees, which may be imposed by the Club, in its sole and absolute discretion, in order to be considered for membership to the Club. It is the responsibility of each Owner of a Unit to review and become familiar with the Club Membership Application and the Club Documents. Declarant and the Association expressly disclaim any representations, warranties, assurances, or commitments that a prospective Owner of a Unit will become a Club Member. If the Club accepts a Club Membership Application, then the Owner is required to be a Club Member and will be subject to all rights and obligations set forth in the Club Documents.

### Non-Equity

11.3 ; Acknowledgements. Each Owner of a Unit within the Project, agrees and acknowledges that the Club and the Club Amenities will be owned (or controlled), operated, and managed separately from, and not as a part of, the Association and that membership in the Club and use of and access to the Club Amenities will be governed by the Club Documents, which are not enforced by the Association in any manner. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use or access any of the Club Amenities. Rights to use or access the Club Amenities will be determined from time-to-time by the Club Operator. Each Owner of a Unit within the Project agrees and acknowledges that the Club Operator shall have the right, from time-to-time, in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of the rights

to use or access the Club Amenities, including, without limitation, the eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users, and the Club Operator shall also have the right to reserve use and access rights and to terminate use rights altogether, all as provided and governed in the terms and conditions of the Club Documents.

1.1 Facilities and Operations. The Club may own, lease, or obtain a license for Units, Commercial Lots, and other parcels or areas within or without the Project for the provision of the Club Amenities. The Club Operator may establish such rules and regulations as the Club Operator determines, in its sole discretion, for use, maintenance, and management of the Club, Club Memberships, and Club Amenities. All Persons, including all Owners, are hereby advised that no representations, warranties, or assurances of any kind have been or are made by Declarant, the Manager, the Club Operator, the Association, or by any Person acting on behalf of any of the foregoing (including, the Real Estate Brokerage), with regard to the continuing ownership or operation of any Club Amenity or Club Amenities. Consent of the Association and any voting Member, or any Owner shall not be required to effectuate any change in ownership or operation of any Club Amenities, for or without consideration, and subject to or free of any mortgage, covenant, lien, or other encumbrance. The ownership or operation of the Club Amenities may change at any time by virtue of, but without limitation: (i) the sale to or assumption of operations of any Club Amenity by a Person other than the current Club Operator; (ii) the establishment of, or conversion of, the membership structure of the Club; or (iii) the conveyance of any Club Amenity to one or more of Declarant's affiliates, successors, assigns, affiliates, shareholders, employees, or independent contractors.

## ARTICLE 12 SPECIAL DECLARANT RIGHTS

12.1 Improvements. Declarant hereby reserves for itself, its successors, and assigns the right, but is not obligated, to construct: (i) any Improvements shown on the Plat, as amended or supplemented from time-to-time; and (ii) any other Buildings, structures, or improvements that Declarant desires to construct on or within the Project.

12.2 Development Rights. Declarant hereby reserves for itself, its successors and assigns the right to create, amend, update, and/or terminate those easements as described in Article 3 and as elsewhere set forth in this Declaration.

12.3 Sales Offices and Models. Notwithstanding anything in this Declaration to the contrary and in addition to those rights under Section 4.8, until all of the Units have been sold by the Declarant, Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant.

12.3.1 Declarant and Club Operator shall have the right to maintain promotional, advertising, and/or signs, banners, or similar devices at any place or places on the Project.

12.3.2 Declarant shall have the right from time-to-time to locate or relocate any signs, banners, or similar devices, but in connection with such location or relocation shall observe the limitations imposed by the preceding portion of this Section 12.3. Within a reasonable period after the date

of the sale of the last Unit owned by the Declarant, Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Project for the purpose of aiding Declarant's sales efforts. Any signs, banners, or similar devices, and any separate structure or facility for aiding Declarant's sales efforts shall comply with the Act and any valid and enforceable ordinances, development codes, laws, rules, and regulations enacted and enforced by MIDA, Wasatch County, and/or the State of Utah, as applicable.

12.3.3 Declarant shall have all of the rights with respect to the Additional Property, if applicable, that is described in Article 14 below.

12.4 Exercising Special Declarant Rights. Subject to any applicable limitations provided for in this Declaration or the Act, Declarant may exercise its Special Declarant Rights at any time prior to the later of (i) the expiration of Declarant's Period of Control, or (ii) the date that is one hundred (100) years, or the longest period allowed by law, after the date on which this Declaration is recorded in the Official Records. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article 12 and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.5 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that interferes with or diminishes any of the Special Declarant Rights, without Declarant's prior written consent. Any action taken in violation of this Section 12.5 shall be void and have no force or effect.

12.6 Rights Transferable. Declarant may transfer and/or assign all or any portions of Special Declarant Rights reserved to it under this Article 12 or under any other provision of this Declaration in accordance with the terms and conditions of the Act. Any transfer and/or assignment of the Special Declarant Rights shall be in writing and recorded in the Official Records.

12.7 Use of the Words "Marcella", "Marcella Landing", "Marcella Landing Townhomes".

12.7.1 Prohibition on the Use of the Words "Marcella", "Marcella Landing", and "Marcella Landing Townhomes" or derivative Trademarks. No Person shall use the words "Marcella", "Marcella Landing", "Marcella Landing Townhomes", or any derivative of any "Marcella" marks, in any printed, electronic, or promotional material, without the Declarant's prior written consent (collectively, the "Protected Marks"). Any Member of the Association that is found to have used the Protected Marks or derivatives thereof as set forth in this Section 12.7 without Declarant's prior written consent shall be subject to the following fines, which fines once collected shall be given to Declarant or its designee:

- (a) \$1,000 per occurrence for the first five occurrences of such misuse,

- (b) \$2,000 per occurrence for the next five occurrence of such misuse; and
- (c) \$10,000 for each occurrence of a misuse thereafter.

An occurrence shall include each instance of publication in any form including paper, virtual, or other forms and each time the Protected Marks or derivatives thereof appear or are viewed electronically, whether on a single page or otherwise, shall constitute separate publication of such term and occurrence of misuse. So, if Protected Marks violating this Section 12.7 were to appear on a single web page three (3) times and such page were viewed five (5) times by the same or different people, then the total occurrences of misuse would be fifteen (15) (3 misuses per page multiplied by 5 views of such page) and the total fines would be \$65,000 (\$5,000 for the first five misuses, \$10,000 for the next misuses, and \$50,000 for each of the next 5 misuses).

12.8 Protected Marks. Any use by the Association of names, marks, or symbols of RS21 Mayflower LLC or any of its affiliates, including the Protected Marks described in Section 12.7, (collectively, the “Marcella Marks”) shall inure to the benefit of RS21 Mayflower LLC and shall be subject to RS21 Mayflower LLC’s periodic review for quality control. The Association may enter into license agreements with RS21 Mayflower LLC, terminable with or without cause and in a form specified by RS21 Mayflower LLC in its sole discretion, with respect to permissive use of certain Marcella Marks. The Association shall not use any Marcella Marks without RS21 Mayflower LLC’s prior written consent.

## ARTICLE 13 COVENANTS TO RUN WITH LAND

Each provision of this Declaration shall constitute a covenant running with the land and shall be binding upon and shall inure to the benefit of the Association and each Owner and their respective successors and assigns, all of which Persons may enforce any duties, liabilities, and obligations created by this Declaration. This Declaration shall be binding on each part of the Project (including, without limitation, the Units, the Commercial Lots, the Common Areas and Facilities, and Improvements), and all ownership interests and rights in any part of the Project shall be subject to this Declaration. The interests in and rights concerning any portion of the Units, the Commercial Lots, the Common Areas and Facilities, and the Project held by or vested in the Owners or any other Persons on or after the Effective Date of this Declaration shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights. By in any way coming to have any interest in or occupying any part of the Project (including, without limitation, ownership in the Units, the Commercial Lots, or the Common Areas and Facilities), the Owners, Occupants, Permittees, or other Persons so coming to have such interest or occupying any part of the Project agree to be bound by this Declaration; *provided, however*, that no such Owners, Occupants, Permittees, or other Persons shall have any right, interest, or liability under this Declaration as an Owner until such person becomes an “Owner,” as defined in Section 1.39, nor shall such person have any duties, obligations, or liabilities under this Declaration for any acts committed prior to the time such person became an Owner under this Declaration.

## ARTICLE 14



## ANNEXATION OF ADDITIONAL PROPERTY

As of the Effective Date, Declarant has not designated or identified any Additional Property on the Plat or that is anticipated to be applicable to the Project. However, Declarant hereby reserves the exclusive right to annex all or any portions of any real property that is adjacent and contiguous to or in close proximity to the Project, which is later annexed into the Project in accordance with this Article 14, at any time during the existence of this Declaration, in Declarant's sole and absolute discretion. Such one or more annexations, if made, will subject the Additional Property (or applicable portions thereof) to the terms and conditions of this Declaration. Annexations will become effective upon the recording of an amendment or supplement to this Declaration and any amendment to the Plat (if applicable) in the Official Records, which amendment or supplement need be executed only by the Declarant and, as applicable, the record owner(s) of the Additional Property being annexed. Declarant may, in its sole and absolute discretion, provide for any such Additional Property (or applicable portions thereof) so annexed to become part of the Common Areas and Facilities. In accordance with Section 57-8-10(4)(a)(iii) of the Act, Declarant's rights under this Article 14 to annex any applicable Additional Property into the Project shall not exceed seven (7) years after the date on which this Declaration is recorded in the Official Records.

## ARTICLE 15 AMENDMENTS TO DECLARATION

15.1 Requisite Parties. This Declaration may be amended only by an instrument recorded in the Official Records, executed by the Association and each Owner, except as follows:

15.1.1 an amendment to annex any Additional Property into the Project and this Declaration shall be made by recording an amendment or supplement to this Declaration executed by Declarant as provided in Article 14 and need not be signed by the Association or any other Owners and shall set forth a metes and bounds description (or other platted legal description) of such Additional Property, and such additional Restrictions, if any, affecting such Additional Property as may be necessary or appropriate, as determined by the Declarant, in its sole and absolute discretion;

15.1.2 any amendment to this Declaration that subdivides or divides an existing Unit into two or more Units, any existing Commercial Lot into two or more Commercial Lots, or any Common Areas and Facilities into two or more common area lots only needs to be executed by the Association and the Owner of the Unit(s), Commercial Lot(s), or Common Areas and Facilities concerned, and shall set forth the metes and bounds descriptions (or other platted legal descriptions) of such new Lots, Commercial Lots, and/or common area lots;

15.1.3 any amendment to this Declaration that changes the metes and bounds or platted legal descriptions of two or more Units, two or more Commercial Lots, or two or more common area lots (for example, a boundary line adjustment) only needs to be executed by the Association and each Owner of such Units, Commercial Lots, and/or Common Areas and Facilities concerned, and shall set forth the new metes and bounds or platted legal descriptions of such Units, Commercial Lots, and/or common area lots; and

15.1.4 any instrument effective as an amendment to this Declaration pursuant to which the Association assigns its rights, duties, liabilities, and obligations under this Declaration to another Owner or the Manager only needs to be executed by the existing Association and the new, assignee Owner, the Manager, or other responsible party, and shall set forth a metes and bounds or platted legal description of such new Owner's Unit and/or Commercial Lot, as and if applicable.

15.2 No Other Person Required. Unless it is a required party to any amendment or supplement of this Declaration concerned under Section 15.1 above, no other Person (including, without limitation, any Person holding any rights or interest in or occupying any Unit or Commercial Lot, whether as an Occupant or Permittee under a lease or otherwise) needs to execute such amendment in order to make such amendment or supplement in all respects effective, valid, binding, and enforceable; *provided, however*, that no amendment or supplement to this Declaration shall affect the rights and interests of any Mortgagee holding a Mortgage that constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite Persons and other parties to an amendment or supplement of this Declaration shall not withhold, condition, or delay the approval or execution of such amendment in a manner that is unreasonable.

## ARTICLE 16 DISPUTE RESOLUTION

16.1 Statement of Intent. Prior to purchasing any individual Unit or Commercial Lot or combination of Units and Commercial Lots within the Project, each Owner has been given the right and opportunity to perform an inspection (or to pay a third-party inspector to perform an inspection on its behalf) on such Unit(s) and Commercial Lot(s) and is capable of obtaining and has been given the right and opportunity to perform its own independent due diligence pertaining to such Unit(s) and/or Commercial Lot(s) and has been permitted the opportunity to perform its own independent due diligence (or cause such due diligence to be performed by a third-party inspector or attorney) on such Unit(s) and/or Commercial Lot(s) that the Owner has elected to purchase and to conduct an inspection, examination, and due diligence on those Common Areas and Facilities, Improvements, and other portions of the Project that have been designated for the common or joint use and benefit of the Owners and their respective Occupants and Permittees. Each Owner, or the Association as applicable, by virtue of accepting a deed or title to any individual Unit or Commercial Lot or combination of Units and Commercial Lots or Common Areas and Facilities within the Project (whether from Declarant or another party) and, to the fullest extent permitted by law, agrees and acknowledges that such Owner has elected to purchase such Unit(s) and/or Commercial Lot(s) and take possession of such Unit(s) and/or Commercial Lot(s) in the "AS IS" "WHERE IS" condition of any such Unit(s) and/or Commercial Lot(s) and the "AS IS" "WHERE IS" condition of the Common Areas and Facilities (including, the Limited Common Areas), Improvements, and the Project and based upon each Owner's or the Association's own independent judgment, inspections, examinations, and due diligence and subject to the Project Documents, the Recorded Documents, and any other matters disclosed by Declarant or as otherwise known or discovered by each Owner or the Association in connection with such Owner's or Association's own independent due diligence or as disclosed in

such Owner's or Association's inspections and examinations. Moreover, if any written warranties have been provided by the Declarant or its contractors in connection with the initial construction, improvement, and development of any Unit(s), Commercial Lot(s), and/or Common Areas and Facilities within the Project, such warranties shall be limited by and to the express terms, conditions, periods, and all other matters expressly identified and warranted in such written warranties, if any. Having had the ability to inspect prior to purchasing any Unit or Commercial Lot within the Project, having received a written warranty (if any warranty is provided), and having paid fair market value for a Unit and/or Commercial Lot at the time of purchase, it is agreed and acknowledged by any Owner by virtue of accepting a deed or title to any individual Unit or Commercial Lot or combination of Units and Commercial Lots within the Project (whether from Declarant or another party) that it is and would be unfair, unreasonable, and improper to later seek to have the Declarant and/or any contractor and/or subcontractor performing the initial construction, improvement, and development of any Unit(s), Commercial Lot(s), and/or Common Areas and Facilities to change, upgrade, or add additional work outside of the scope of the initial construction and any express warranty obligation (if any). Moreover, the Owners of Units and Commercial Lots within the Project (by virtue of accepting a deed or title to any individual Unit or Commercial Lot or combination of Units and Commercial Lots within the Project) agree and acknowledge that claims and disputes shall first be asserted and resolved through the Pre-Litigation Non-Adversarial Procedures, as set forth in the provisions of this Article 16. Unless otherwise provided in writing (and then only except to the extent of such writing), the Declarant and its contractors specifically disclaim any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law. Each Owner and the Association agree to provide Declarant with written notice of any matters relating to a claim for defect of faulty workmanship or deficiencies as soon as reasonably possible after such Owner or the Association becomes aware of such matters and dispute. The providing of notice and any opportunity or rights to cure any alleged claims for faulty workmanship or deficiencies shall not extend the period of which a dispute must be commenced under any warranty and/or applicable statutes of limitations or repose as provided under Utah law.

16.2 Pre-Litigation Non-Adversarial Procedures for All Disputes. To the fullest extent permitted by law, prior to, and as a condition precedent to, initiating any claims or disputes of any kind against Declarant, and/or any of their respective affiliates, successors, assigns, agents, employees, contractors, subcontractors, architects, engineers, and/or other builder parties involved in the design, construction, and development of the Project (including, filing any claim or action or initiating any binding arbitration) (each, a "Dispute"), any Owner or Association desiring to make a claim or initiate a Dispute shall first attempt to resolve said Dispute in accordance with the Pre-Litigation Non-Adversarial Procedures and satisfy all other requirements in strict accordance with the provisions of this Article 16. Without limiting the generality of the foregoing, the types of Dispute(s) subject to this Article 16 shall include, but not be limited to, the following:

16.2.1 Any dispute, claim, disagreement, or allegation that a condition related to any of the Units, Commercial Lots, the Buildings, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, or other areas of the Project is, are, or involves any kind of a construction defect or as to whether any alleged construction defect has been corrected;

16.2.2 Any dispute, claim, disagreement, or allegation about whether any warranties, including, any allegation of implied warranties, applicable to any of the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, or other areas of the Project are applicable to the subject matter of a dispute;

16.2.3 Any dispute, claim, disagreement, or allegation as to the enforceability of any warranties alleged to be applicable to any of the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, or other areas of the Project or as to whether any such alleged representation or warranty has been breached;

16.2.4 Any dispute, claim, disagreement, or allegation related to any potential violation of consumer protection, unfair trade practices, or other statutes or laws;

16.2.5 Any dispute, claim, disagreement, or allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, or any other claims that may arise in equity or from common law;

16.2.6 Any dispute, claim, disagreement, or allegation that any condition related to any of the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, or other areas of the Project or caused or created by Declarant or any officers, members, managers, or representatives, agents, or employees of the Declarant (including, any contractors, subcontractors, architects, engineers, and/or builder parties engaged or used by Declarant), including, any construction related noises, dust, and/or traffic, is a nuisance, a defect, or a breach of this Declaration or any alleged breach of any implied warranties of habitability or other implied warranties;

16.2.7 Any dispute, claim, disagreement, or allegation concerning the timeliness of any performance of any act to be performed by Declarant or its contractors;

16.2.8 Any dispute, claim, disagreement, or allegation regarding the various rights, interests, duties, obligations, and/or performance of Declarant under this Declaration, including, matters related to the management and affairs of the Association and the reserve funds, the reserve analysis, or funding of Association expenses; and

16.2.9 Any other dispute, claim, disagreement, or allegation arising out of or relating to the sale, design, planning, development, and/or initial or subsequent construction, maintenance, repair, replacement, and/or remodeling of any of the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, or other areas of the Project, the formation, operation, governance, and/or management of the Association, or other claims regarding the Project.

### 16.3 Pre-Litigation Non-Adversarial Procedure Requirements.

16.3.1 Generally. Any Owner (including, the Association in connection with its ownership of the Common Areas and Facilities) desiring to make or file a claim or initiate a Dispute of any kind against Declarant, and/or any of its respective affiliates, successors, assigns, agents, employees, contractors, subcontractors, architects, engineers, and/or other builder parties may

only do so after all Pre-Litigation Non Adversarial Procedures of this Article 16 have been satisfied.

**16.3.2 Notice of Claim.** Any Owner or Association seeking to make or file a claim or initiate a Dispute against the Declarant (including, against any of their respective affiliates, successors, assigns, agents, employees, contractors, subcontractors, architects, engineers, and/or other builder parties) must provide a written notice of claim ("Notice of Claim") delivered to: RS21 Mayflower LLC, 2600 N. Ashton Blvd, #200, Lehi, Utah 84043, Attention: General Counsel and by email to notices@reefpe.com. For purposes of this Article 16, "Notice of Claim" shall mean and include all of the following information: (a) an explanation of the nature of the claim, (b) a specific breakdown and calculation of any alleged damages, (c) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (d) photographs of any alleged defective condition, if applicable, (e) samples of any alleged defective conditions or materials, if reasonably available, (f) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (g) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim. Each Owner and the Association agree to provide Declarant and its representatives, contractors, and others, as Declarant may request, with prompt, reasonable cooperation, which may, for example include access to all portions of the Project, in order to facilitate any investigation regarding the Dispute, including, without limitation, for purpose of inspecting, testing, repairing, replacing, correcting, or otherwise addressing the matters related to the Dispute. If the Dispute arises out of or related to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Project, Declarant is hereby granted the rights to access, inspect, repair, and/or replace any and all affected parts at its sole discretion, but is under no obligation to do so.

In the event an Owner or the Association provides notice of an alleged defect within one (1) year from the acceptance of a deed or title to any individual Unit, Commercial Lot, or any of the Common Areas and Facilities from Declarant, Declarant will inspect the applicable Unit, Commercial Lot, Common Areas and Facilities, Building, Improvement, or other portions of the Project within fourteen (14) business days of receipt of the Owner or the Association's written notifications and within fourteen (14) business days of the inspection, Declarant will advise the Owner or the Association in writing whether it believes that any repairs, warranty work, or replacements are warranted.

If the Pre-Litigation Non-Adversarial Procedures and any other requirements or measures in this Article 16 are unsuccessful, each Owner and the Association agree to comply with the mediation procedure set forth below prior to commencement of any legal action.

**16.3.3 Mediation.** The parties to any Dispute shall make a demonstrable, good faith effort to resolve any Disputes without formal, legal proceedings prior to initiating litigation. Mediation is an express condition precedent to the allowance for litigation. Any commencement of litigation shall be stayed until the conclusion of the mediation process as set forth below in this Section 16.3.3. The following shall apply: a) any mediation shall be conducted by a mediator mutually agreed to by the parties to the Dispute and such mediator shall be a retired judge with experience in deciding disputes concerning such matters which is the subject of the Dispute between the parties; b) the



rules and procedures of the designated alternative dispute resolution organization that are in effect at the time of the commencement of the mediation shall be followed by the parties to the Dispute; c) a request for mediation shall be made in writing and delivered to the other party or parties to the Dispute; d) the request may be made concurrently with the filing of a complaint or commencement of arbitration but, in such event, mediation shall proceed and be completed in advance of such litigation. In the event litigation is commenced, such litigation shall be stayed pending mediation for a period of (120) calendar days from the date of filing, unless stayed for a longer period by agreement of the parties or court order; and e) the parties to the Dispute will share equally in the cost of such mediation.

The parties to the Dispute shall attempt to resolve the Dispute through mediation through good faith negotiations until one of the following occurs: (i) the parties reach a written settlement; (ii) the mediator notifies the parties in writing that they have reached an impasse; (iii) the parties agree in writing that they have reached an impasse; or (iv) the parties have not reached a settlement within one hundred and twenty (120) days after the written request for mediation.

Nothing in this Article 16 prohibits any party from seeking emergency legal or equitable relief, pending mediation.

**16.4 Waiver of Subrogation.** The Association and each Owner, by virtue of accepting a deed or title to any individual Unit or Commercial Lot or combination of Units and Commercial Lots within the Project (whether from Declarant or another party), including, the Common Areas and Facilities with respect to the Association, to the fullest extent permitted by law, shall be deemed to have automatically waived any and all rights to subrogation against the Declarant and any contractors, subcontractors, architects, engineers, and builder parties engaged or used by Declarant in connection with the design, construction, and development of the Project. The waiver under this Section 16.4 shall be broadly construed and is intended to apply to waive, among other things, any attempt by any insurer of the Association or any of the Owners from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and any contractors, subcontractors, architects, engineers, and builder parties engaged or used by Declarant in connection with the Project, and their respective officers, employees, owners, representatives, agents, and consultants. To the full extent permitted by law, the Association and Owners hereby release Declarant and each of the contractors, subcontractors, architects, engineers, and builder parties engaged or used by Declarant in connection with the design, construction, and development of the Project, and their respective officers, employees, owners, contractors, representatives, agents, and consultants, from any and all liability to the Association and all Owners, and anyone claiming by, through, or under them by way of subrogation or otherwise, for any loss, injury, or damage to any individual Unit or Commercial Lot or combination of Units or Commercial Lots, the Common Areas and Facilities, and the Project, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or one or more of the contractors, subcontractors, architects, engineers, and/or builder parties engaged or used by Declarant in connection with the Project. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall

indemnify, defend, and hold harmless the Declarant and each of the contractors, subcontractors, architects, engineers, and builder parties engaged or used by Declarant in connection with the Project, and their respective officers, employees, owners, representatives, agents, and consultants from any claims and Dispute(s) barred or released by this Section 16.4, including, but not limited to, any claim or Dispute brought under any right of subrogation.

**ARTICLE 17**  
**NO REPRESENTATIONS OR WARRANTIES; DISCLAIMERS AND**  
**ACKNOWLEDGEMENTS**

17.1 No Representations or Warranties. NO REPRESENTATIONS, WARRANTIES, COVENANTS, OR ASSURANCES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY THE DECLARANT, THE MANAGER, THE ASSOCIATION, OR ANY OF THEIR AGENTS, CONTRACTORS, OR EMPLOYEES (INCLUDING, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) IN CONNECTION WITH ANY OF THE UNITS, THE COMMERCIAL LOTS, OR ANY OTHER PORTIONS OF THE PROJECT (INCLUDING, WITHOUT LIMITATION, THE COMMON AREAS AND FACILITIES AND OTHER IMPROVEMENTS WITHIN THE PROJECT), THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, SECURITY (INCLUDING, WITHOUT LIMITATION, FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS OR ANY SECURITY MEASURES UNDERTAKEN WHATSOEVER), FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES, OR REGULATION THEREOF, EXCEPT: (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION, THE PROJECT DOCUMENTS, OR IN ANY OTHER DOCUMENTS WHICH MAY BE FILED BY THE PARTY TO BE CHARGED FROM TIME-TO-TIME WITH APPLICABLE REGULATORY AGENCIES; AND (B) AS OTHERWISE REQUIRED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OWNER RECOGNIZES AND AGREES THAT WITH BUILDINGS, COMMON AREAS AND FACILITIES, AND IMPROVEMENTS THE SIZE AND NATURE OF THOSE CONSTRUCTED WITHIN THE PROJECT, IT IS TYPICAL TO EXPECT BOWING AND/OR DEFLECTION OF MATERIALS. ACCORDINGLY, INSTALLATION OF FINISHES AND MATERIALS MUST TAKE THE SAME INTO ACCOUNT. FURTHER, EACH OWNER RECOGNIZES AND AGREES THAT THE EXTERIOR LIGHTING SCHEME FOR THE BUILDINGS AND WITHIN THE PROJECT (INCLUDING, OTHER ADJACENT OR NEARBY PROPERTIES AND ROADWAYS) MAY CAUSE EXCESSIVE AND/OR UNINTERRUPTED ILLUMINATION. ACCORDINGLY, INSTALLATION OF INTERIOR WINDOW TREATMENTS SHOULD TAKE SAME INTO ACCOUNT. AMONG OTHER ACTS OF GOD AND UNCONTROLLABLE EVENTS OR ACTIVITIES (INCLUDING, EVENTS OF FORCE MAJEURE (AS DEFINED BELOW)), EXCESSIVE HEAT, EXTREME COLD, EXTREME DROUGHT, FLASH FLOODS, AND SEVERE STORMS HAVE OCCURRED IN THE WASATCH COUNTY AREA AND, GIVEN THE FACT THAT THE STATE OF UTAH IS IN THE HIGH DESERT AND THE PROJECT IS NEAR THE

JORDANELLE RESERVIOR AND FALLS WITHIN A MOUNTAINOUS REGION, THE PROJECT IS EXPOSED TO THE POTENTIAL DAMAGES FROM EXCESSIVE HEAT, EXTREME COLD, EXTREME DROUGHT, FLASH FLOODS, AND EXTREME STORMS, AND DAMAGES FROM THESE OR OTHER EXTRAORDINARY CAUSES SHALL NOT BE THE RESPONSIBILITY OF THE DECLARANT, THE MANAGER, OR THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT).

AS TO ANY WARRANTIES WHICH CANNOT BE DISCLAIMED AS A MATTER OF LAW, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS (INCLUDING, ANY ACTS OF GOD, EVENTS OF FORCE MAJEURE, AND/OR UNCONTROLLABLE EVENTS OR ACTIVITIES), ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED BY EACH OWNER. ALL OWNERS AND THE ASSOCIATION, BY VIRTUE OF ACCEPTING A DEED OR TITLE TO ANY INDIVIDUAL UNIT OR COMMERCIAL LOT OR COMBINATION OF UNITS AND COMMERCIAL LOTS WITHIN THE PROJECT (WHETHER FROM DECLARANT OR ANOTHER PARTY), INCLUDING, THE COMMON AREAS AND FACILITIES WITH RESPECT TO THE ASSOCIATION, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

FURTHER, EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, FUNGI, MILDEW, AND/OR OTHER MYCOTOXINS MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING A DEED OR TITLE TO AN INDIVIDUAL UNIT OR COMMERCIAL LOT OR COMBINATION OF UNITS AND COMMERCIAL LOTS OR CONTROL OVER ANY OF SAME, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, FUNGI, MILDEW, AND/OR OTHER MYCOTOXINS AND TO HAVE RELEASED THE DECLARANT, THE MANAGER, AND THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) FROM ANY AND ALL LIABILITY RESULTING FROM SAME.

FURTHER, EACH OWNER IS HEREBY ADVISED THAT RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A UNIT OR BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN OR THROUGHOUT THE STATE OF UTAH. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM THE APPLICABLE COUNTY PUBLIC HEALTH UNIT. BY ACQUIRING A DEED OR TITLE TO AN INDIVIDUAL UNIT OR COMMERCIAL LOT OR COMBINATION OF

UNITS AND COMMERCIAL LOTS OR CONTROL OVER ANY OF SAME, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH OR CAUSED BY RADON AND OTHER NATURALLY OCCURRING RADIOACTIVE GASES AND TO HAVE RELEASED THE DECLARANT, THE MANAGER, AND THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) FROM ANY AND ALL LIABILITY RESULTING FROM SAME.

17.2 General Disclaimer. NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR IN THE PROJECT DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, NONE OF THE DECLARANT, THE MANAGER, OR THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) SHALL BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY, OR WELFARE OF ANY OWNERS OR THEIR RESPECTIVE PERMITTEES OR ANY OTHER USERS OF ANY PORTION OF THE PROJECT, INCLUDING, WITHOUT LIMITATION, THEIR GUESTS, OCCUPANTS, TENANTS, INVITEES, LICENSEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, OR DESIGNEES, OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

17.2.1 NONE OF THE DECLARANT, THE MANAGER, OR THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) IS EMPOWERED OR ESTABLISHED TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES COMPLIANCE WITH THE LAWS OF THE UNITED STATES, THE STATE OF UTAH, THE COUNTY OF WASATCH, MIDA, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES.

17.2.2 ANY PROVISIONS OF THIS DECLARATION SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY, AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE RECIPIENT OF SUCH ASSESSMENT FUNDS TO PROTECT OR FURTHER THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

17.2.3 NOTWITHSTANDING ANY DUTY OF THE ASSOCIATION TO MAINTAIN AND/OR REPAIR PORTIONS OF THE PROJECT (INCLUDING, BY WAY OF EXAMPLE, THE COMMON AREAS AND FACILITIES), NONE OF THE DECLARANT, THE



MANAGER, OR THE ASSOCIATION SHALL BE LIABLE TO ANY OWNER OR ITS PERMITTEES (AND/OR SUCH OWNER'S FAMILY), OCCUPANTS, OR USERS OF ANY PORTION OF THE PROJECT, INCLUDING, WITHOUT LIMITATION, THEIR GUESTS, TENANTS, INVITEES, LICENSEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, OR DESIGNEES, RELATIVE TO ANY PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR OTHER LIABILITY CAUSED BY ANY LATENT CONDITION OF THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY OF THE INDIVIDUAL UNITS, THE COMMON AREAS AND FACILITIES, AND/OR ANY PORTIONS THEREOF). FURTHERMORE, NONE OF THE DECLARANT, THE MANAGER, OR THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, DEATH, OR OTHER LIABILITY CAUSED BY DEFECTS IN DESIGN OR WORKMANSHIP, OR ANY OTHER REASON, CONNECTED WITH ANY ADDITIONS, ALTERATIONS, OR IMPROVEMENTS OR OTHER ACTIVITIES DONE BY OR ON BEHALF OF ANY OWNER REGARDLESS OF WHETHER OR NOT ANY SUCH ADDITIONS, ALTERATIONS, IMPROVEMENTS, OR OTHER ACTIVITIES SHALL HAVE BEEN APPROVED BY THE DECLARANT, THE MANAGER, OR THE ASSOCIATION OR ARE OTHERWISE PERMITTED PURSUANT TO THE TERMS OF THIS DECLARATION OR THE PROJECT DOCUMENTS. THE DECLARANT, THE MANAGER, AND THE ASSOCIATION ALSO SHALL NOT BE LIABLE TO ANY OWNER OR ITS PERMITTEES (AND/OR SUCH OWNER'S FAMILY), OCCUPANTS, OR USERS OF ANY PORTION OF THE PROJECT INCLUDING, WITHOUT LIMITATION, THEIR GUESTS, OCCUPANTS, TENANTS, INVITEES, LICENSEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, OR DESIGNEES, RELATIVE TO ANY PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR OTHER LIABILITY ON THE GROUNDS THAT THE DECLARANT, THE MANAGER, OR THE ASSOCIATION DID NOT OBTAIN OR MAINTAIN INSURANCE (OR CARRY INSURANCE WITH A PARTICULAR DEDUCTIBLE AMOUNT) RELATIVE TO ANY PARTICULAR MATTER WHERE SUCH INSURANCE IS NOT REQUIRED HEREBY OR COULD NOT OBTAIN SUCH INSURANCE AT REASONABLE COSTS OR UPON REASONABLE TERMS. THE DECLARANT, THE MANAGER, AND THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) ALSO SHALL NOT BE LIABLE TO ANY OWNER OR ITS RESPECTIVE PERMITTEES (AND/OR SUCH OWNER'S FAMILY), OCCUPANTS, OR USERS OF ANY PORTION OF THE PROJECT, INCLUDING, WITHOUT LIMITATION, THEIR GUESTS, OCCUPANTS, TENANTS, INVITEES, LICENSEES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, OR DESIGNEES, RELATIVE TO ANY PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR OTHER LIABILITY RESULTING FROM: SOUND AND/OR VIBRATION TRANSMISSION, INCLUDING, WITHOUT LIMITATION, SOUND AND/OR VIBRATION TRANSMISSION FROM THE COMMON AREAS AND FACILITIES, ANY BUILDINGS OR



IMPROVEMENTS, OR OTHER AREAS OF THE PROJECT OR OTHER ADJACENT OR NEARBY PROPERTIES; LIGHT TRANSMISSION OR LIGHT POLLUTION FROM ANY LIGHTING SCHEME OR LIGHTING IMPROVEMENTS LOCATED ON OR WITHIN THE COMMON AREAS AND FACILITIES, ANY BUILDINGS OR IMPROVEMENTS, OR OTHER AREAS OF THE PROJECT OR OTHER ADJACENT OR NEARBY PROPERTIES; AND/OR ODOR TRANSMISSION FROM THE COMMON AREAS AND FACILITIES, ANY BUILDINGS OR IMPROVEMENTS, OR OTHER AREAS OF THE PROJECT OR OTHER ADJACENT OR NEARBY PROPERTIES.

17.2.4 NONE OF THE DECLARANT, THE MANAGER, OR THE ASSOCIATION (INCLUDING, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT) SHALL IN ANY WAY BE CONSIDERED GUARANTORS OF SECURITY (INCLUDING, WITHOUT LIMITATION, FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS OR ANY SECURITY MEASURES UNDERTAKEN WHATSOEVER) WITHIN THE PROJECT AND/OR THE BUILDINGS AND/OR ANY PARTICULAR UNIT OR COMMERCIAL LOT, NOR SHALL ANY OF THE SAME (NOR ANY SUCCESSOR OR ASSIGN OF ANY OF SAME) BE HELD LIABLE FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY BY REASON OF FAILURE TO PROVIDE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, INCLUDING, WITHOUT LIMITATION, FIRE AND/OR BURGLAR ALARM, AND/OR PREVENTION AND/OR MITIGATION SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WHATSOEVER.

17.2.5 EACH OWNER, BY VIRTUE OF ACCEPTING A DEED OR TITLE TO ANY INDIVIDUAL UNIT OR COMMERCIAL LOT OR COMBINATION OF UNITS AND COMMERCIAL LOTS WITHIN THE PROJECT (WHETHER FROM DECLARANT OR ANOTHER PARTY) AND/OR CONTROL OVER SAME, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROJECT (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES), SHALL BE BOUND BY THIS ARTICLE 17 AND SHALL BE DEEMED AUTOMATICALLY TO HAVE WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST THE DECLARANT, THE MANAGER, AND/OR THE ASSOCIATION, THEIR AFFILIATES, AND ALL OF THEIR RESPECTIVE OFFICERS, MANAGERS, AGENTS, EMPLOYEES, SUPPLIERS, AND CONTRACTORS (INCLUDING, ANY CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, AND/OR BUILDER PARTIES ENGAGED OR USED BY DECLARANT IN CONNECTION WITH THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF THE PROJECT), ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE AFOREMENTIONED PARTIES HAS BEEN DISCLAIMED IN THIS DECLARATION.

17.2.6 ALL RELEASES, DISCLAIMERS OF LIABILITY, INDEMNITIES, AND/OR "HOLD HARMLESS" PROVISIONS SET FORTH IN THIS DECLARATION IN FAVOR OF THE

DECLARANT, THE MANAGER, AND/OR THE ASSOCIATION SHALL BE DEEMED ALSO TO INCLUDE: (A) THE PARTNERS, MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, MANAGERS, COMMITTEE, AND BOARD OF DIRECTORS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING, ANY SERVICE PROVIDERS), SUBCONTRACTORS, AND BUILDER PARTIES OF THE DECLARANT, THE MANAGER, AND THE ASSOCIATION; AND (B) THE SUCCESSORS, ASSIGNS, AND AFFILIATES OF ALL OF THE FOREGOING.

17.3 Additional Acknowledgements. Each Owner is hereby advised of the following matters affecting the Units, the Commercial Lots, the Buildings, the Common Areas and Facilities, the Improvements, and the Project, and the Owner's use and enjoyment thereof and each Owner, by virtue of accepting a deed or title to any individual Unit or Commercial Lot within the Project (whether from Declarant or another party), to the fullest extent permitted by law, agrees and acknowledges the following:

17.3.1 Rules and Regulations, Easements. Certain Roadways within the Project are or may be subject to restricted access limitations, as set forth in the Project Documents and/or the Recorded Documents, and are or may be subject to rules and regulations provided in the Project Documents and/or the Recorded Documents.

17.3.2 Construction. Substantial construction-related activities relating to the development of the Project and other buildings, facilities, and development projects within the Master Plat or other developments or projects within or near the Project and within the Master Plat may cause considerable noise, dust, lighting, and other inconveniences to the Owners and its Permittees.

17.3.3 Other Projects. The Project and other development projects within the Master Plat may be developed pursuant to the Recorded Documents and certain land uses and restrictions set forth in a plan approved by MIDA and any other applicable governmental authorities with no representations, warranties, assurances, or commitments being made in this Declaration or by Declarant concerning the planned uses of other properties. Such additional development may result in reduction of trees and other foliage, construction of additional roads, sidewalks and trails, increases in traffic, impacts on view corridors and similar effects, both expected and unexpected.

17.3.4 MIDA; Special Taxing Districts.

(a) The Project is located within a MIDA project area and, therefore, is subject to the jurisdiction of MIDA and other applicable governmental authorities. MIDA is an independent authority of the State of Utah.

(b) It is anticipated that the Units and/or the Commercial Lots may be included in one or more special taxing districts. Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such special taxing districts. Property owners in such special taxing districts may be placed at risk for increased mill levies in excess of tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Owners are hereby advised by Declarant to

investigate the debt financing requirements of the authorized general obligations and indebtedness of such special taxing districts, existing mill levies of such special taxing districts, such indebtedness, and the potential for an increase in such mill levies.

17.3.5 Views. There are no protected views in the Project and the Units and Commercial Lots are not assured the existence or unobstructed continuation of any particular view, and any construction, landscaping, or other installation of improvements by Declarant or the Association (including, without limitation, the construction of other Project structures and amenities in the vicinity of any of the Units), or any owners of other property in the vicinity of the Project or within the Master Plat, including, without limitation, Owners of other Units and/or Commercial Lots within the Project, may impair the view from any particular Unit and/or Commercial Lot and each Owner consents to such view impairment. No representations, warranties, assurances, or commitments of any kind have been or are being made in this Declaration or by Declarant regarding the existence, preservation, or permanence of any views from the Units, the Buildings, the Commercial Lots, and/or the Project.

17.3.6 Inherent Risks and Inconveniences. Ownership of real property in or around a ski and golf mountainous resort area near the Jordanelle Reservoir involves certain inherent risks and inconveniences and it is anticipated that certain all-season resort activities in or around the Project will be conducted where such inherent risks and inconveniences are present, including, without limitation, damage to property and improvements and personal injury and death caused by errant skiers, mountain bikers, golfers and errant golf balls and other equipment, and other resort patrons, equipment, machine-made snow, heavy equipment, construction or improvements of facilities, objects, or equipment falling from lifts, water runoff, drainage, heavy snow falls, wind patterns, and other conditions that may affect the Units, the Buildings, the Commercial Lots, and/or the Project. Furthermore, the operator of the resort and other parties may engage in avalanche and other safety control procedures; ski trail and bike/hike trail construction and grooming, including, nighttime snow cat and snowmobile operations; golf course maintenance and care, including, lawn mowing and golf cart and golf operations; resort development, construction, and operations, including nighttime skiing, nighttime lift operations, and the operation of 24-hour a day transportation systems; helicopter tours and skiing; 24-hour a day snow making; and development and construction of hotels, condominiums, townhomes, clubs and club amenities, golf courses, lodges, and other projects and related infrastructure and improvements. Certain areas within the resort may be subject to snow making, grooming, lawn mowing, yard care, landscaping, and the overall operation and management by the operator of the resort as determined by such operator. Snowmaking activities by the resort operator may result in artificial snow being directed at or onto the Units, the Buildings, the Commercial Lots, and/or the Project and improvements thereon, which may result in damage to such improvements. Golf course activities may include, but are not limited to, errant golf balls, golf equipment, fertilizer, and other lawn care products occurring near the Units, the Buildings, the Commercial Lots, and/or the Project and improvements thereon. Owners may experience "overspray" from the resort snowmaking system, sprinkler and watering systems, fertilizer and lawn care treatments and operations, and from drainage and water runoff from the resort. Owners may be exposed to lights, noises, special events, or other activities resulting from the use, operation, construction, improvements, repair, replacement, and maintenance of the resort and/or the development of the Project or other development projects within the Master Plat.

Such uses may include concerts, festivals, art, and other shows and displays, fireworks displays, outdoor markets, and other performances and special events. The resort and its related improvements and facilities, including, without limitation, utilities, may require construction and/or daily maintenance, including grooming, snowmaking, lawn mowing and golf course maintenance, and irrigation during early morning, evening, and late night hours, including, but not limited to, the use of tractors, lawn mowers, blowers, pumps, compressors, utility vehicles, and over-the-snow vehicles. Owners and their guests, lessees, and invitees may experience or be exposed to the noise, light, vibration and other effects of such maintenance and the Owners and their guests, lessees, and invitees acknowledge, accept, and assume the risks associated with such maintenance activities. The resort operator, the Association, and/or the Club operator may engage in the movement and operation of passenger vehicles (including, without limitation, buses, vans, shuttles, and other vehicles transporting passengers), commercial vehicles, construction vehicles, and other equipment over and through the streets and roadways in the resort and the Project. Property damage, personal injury, or other losses may be caused by avalanches, slides, or other movement of snow whether or not human caused, including damage or injury resulting from snow safety/avalanche mitigation programs. Each Owner, by virtue of accepting a deed or title to any individual Unit or Commercial Lot within the Project (whether from Declarant or another party), to the fullest extent permitted by law, for itself and its guests, invitees, lessees, successors, and assigns (i) acknowledges, accepts, and assumes the risks associated with the hazards and risks identified in this Declaration, the Project Documents, and the Recorded Documents and the risks of any damage to property or the value of property, damage to improvements, personal injury or death, or the creation or maintenance of a trespass or nuisance, caused by or arising in connection with any of the hazards identified in this Declaration, the Project Documents, and the Recorded Documents, or other risks, hazards, and dangers associated with the operation of the resort and the Project (collectively, the “Assumed Risks”), and (ii) releases, waives, discharges, and covenants not to sue the Declarant, the Manager, the Association, and the owner and operator of the resort and each of their respective officers, directors, partners, shareholders, members, affiliates, employees, contractors, consultants, agents, successors and assigns, for any damages, losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments, ordinary negligence (but not gross negligence or willful misconduct), or other obligations arising out of or connected in any way with any of the Assumed Risks. This release is intended to be a comprehensive release of liability but is not intended to assert defenses which are prohibited by law. Notwithstanding the foregoing, this release is not intended to limit the liability of individual skiers, individual golfers, mountain bikers, or other resort users using the resort.

**17.3.7 Resort Activities.** As a result of ski resort and/or golf course related activities taking place within, near, or adjacent to the Project, certain ski resort and/or golf course related activities may generate an unpredictable amount of visible, audible, and odorous impacts and disturbances. The activities associated with the ski resort and/or golf course include, without limitation: (i) vehicular and residential traffic, including, without limitation, (1) buses, golf carts, mowers, vans, snow-cats, snowmobiles, helicopters, and other vehicles which transport residents and guests around and through the ski resort and/or golf course, and (2) construction vehicles and equipment; (ii) activities relating to the construction, operation, and maintenance of ski and golf trails, ski-ways and skier bridges, fairways, tee-boxes, greens, and tunnels relating to the ski resort and golf course, including, without limitation, (1) construction, operation and maintenance



of access roads serving the ski resort and/or golf course, snow-making equipment, chair lifts, gondolas and other skier transportation systems, and (2) operation of snow-grooming and grass cutting vehicles and equipment, and safety and supervision vehicles; and (iii) activities relating to the use of the ski resort and/or golf course, including, without limitation, golfing, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities (collectively, the “Resort Activities”). Each Owner, by virtue of accepting a deed or title to any individual Unit or Commercial Lot within the Project (whether from Declarant or another party), to the fullest extent permitted by law, for itself and its guests, invitees, lessees, successors, and assigns, expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including without limitation: (i) noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night); (ii) noise caused by Resort Activities, participants, and spectators; (iii) noise from snowmaking systems, trail grooming machinery, and golf course maintenance equipment; (iv) construction and development activities; (v) view restrictions caused by installation, relocation and maturation of trees and shrubbery and the construction of other buildings and facilities; (vi) reduction in privacy, including that related to maintenance activities; (vii) errant equipment, including skis, mountain bikes, golf balls and golf carts; and (viii) the ski resort and golf course facilities design.

17.3.8 Minor Flaws. Residential and commercial construction are industries inherently subject to variations, imperfections, inconveniences, and items which do not materially affect safety or structural integrity shall be deemed “expected minor flaws” (including, but not limited to: reasonable wear, tear, or deterioration; shrinkage, swelling, expansion, or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects. Such expected minor flaws may include: (a) minor variations in the texture and thickness of stucco or other textured or smooth finishing, including very minor cracks in such materials that could not be prevented during the construction process; (b) minor settlement cracks in drywall, concrete, stucco, flatwork, and block walls that could not be prevented during the construction process; (c) minor twisting and warping of natural materials including, without limitation, wood and plastics, which can result in minor cracks, minor bulges, and other types of minor imperfections that could not be prevented during the construction process; (d) minor deviations in color, grain, and texture that may occur in wood products, concrete, tile, grout, granite, stone, and other finish materials that could not be prevented during the construction process; (e) minor shrinkage, swelling, expansion, or settlement of construction materials that could not be prevented during the construction process; and (f) conditions resulting from normal wear, tear, or deterioration. Each Owner hereby acknowledges the potential for such expected minor flaws in connection with the construction, improvement, and development of the Units, the Commercial Lots, the Common Areas and Facilities (including, the Limited Common Areas), the Improvements, and all other applicable portions of the Project and each Owner hereby releases Declarant, the Manager, and the Association from any and all claims arising from or relating to such expected minor flaws.

17.3.9 No Rights to Use. Owners will not have any ownership interest in, or right to use, the ski resort and/or golf course simply by virtue of its acquisition and ownership of a Unit or Commercial Lot.



17.3.10 Limitations on Privacy; Sound Transmission. Living in a residential community and townhome project in close proximity to other residential property (including, the Shared Components of a Building) or other commercial properties entails living very close to other persons and parties, with attendant limitations on solitude and privacy. The Shared Components of a Building have been designed to meet applicable building codes, however, Owners and their guests may hear noise from adjacent or nearby townhomes or other residences within the Buildings (including, the Shared Components of a Building) and the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets, or other sources of running water and/or plumbing fixtures. In addition, Owners and their guests may hear noise from such items as cleaning activities, vacuum cleaners, stereos, televisions, or people running, walking, exercising, and socializing. Each Owner, to the fullest extent permitted by law, for itself and its guests, invitees, lessees, successors, and assigns, hereby releases, waives, discharges, and covenants not to sue the Declarant, the Manager, and the Association from any and all claims arising from or relating to the presence of noises, light, and smoke in and about the Buildings (including, the Shared Components of a Building) and the Project. The Owners and their guests are advised that sound transmission may be very difficult to control and that noise from adjoining Units and/or Commercial Lots, nearby parcels of land, and/or mechanical equipment can often be heard in other residences. Neither Declarant, the Manager, the Association, nor by any Person acting on behalf of any of the foregoing (including, the Real Estate Brokerage), have made any representations, warranties, assurances, or commitments of any kind regarding the level of sound transmission between the Units, the Buildings (including, the Shared Components of a Building), and the Project, and the Owners hereby waive and expressly release any such warranties and claims for loss or damages resulting from sound transmission.

## ARTICLE 18 MISCELLANEOUS

18.1 Incorporation of Recitals. The foregoing recitals as contained in this Declaration are true and correct and hereby incorporated by reference as part of this Declaration.

18.2 Release on Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Unit or Commercial Lot, such Owner shall be relieved of all duties, liabilities, and obligations under this Declaration related to such Unit or Commercial Lot, except for such duties, liabilities, or obligations as may have accrued as of the date of such transfer or divestiture.

18.3 No Merger. The Restrictions and all other limitations, reservations, rights, easements, conditions, obligations, covenants, and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Project may be owned by the same person from time-to-time, it being the intention of the Declarant, the Association, and the Owners to create a common scheme for the development, use, and operation of the Project that will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Section 18.6.

18.4 Force Majeure. The Declarant, the Association, and any Owners or other Persons obligated under this Declaration shall be excused from performing any liabilities, obligations, or covenants

set forth in this Declaration and shall not be liable for any delays or failures in the keeping or performance of its liabilities, obligations, or covenants under this Declaration during the time and to the extent that any such delays or failure is due to causes or events beyond the control and without the fault or negligence of the Declarant, the Association, Owners, or Persons affected, which shall include, without limitation, causes or events such as any acts of God, acts of civil or military authority, fire, explosion, epidemics, pandemics, contagions, diseases, or viruses (including, by way of example, Covid-19 events), floods, earthquakes, unusually adverse weather conditions, riots, wars, terrorism, sabotage, actions or restrictions of governmental authorities, governmental regulation of the sale, production, or use of materials or supplies or the transportation thereof, government shutdowns or postponements of meetings, or other similar or dissimilar causes or events not within such party's reasonable control (each, considered acceptable "Events of Force Majeure"), but not including generalized economic conditions, recession, or depression. Upon the occurrence of any such Events of Force Majeure, the Declarant, the Association, Owners, or Persons affected shall promptly give written notice to the other party or parties (including, the Owners) to this Declaration and shall promptly resume the keeping and performance of the affected liabilities, obligations, or covenants under this Declaration after any such Events of Force Majeure have come to an end. The notice of any Events of Force Majeure will set forth in reasonable detail the nature and circumstances of the Events of Force Majeure, the expected effect and delays of the Events of Force Majeure on the affected party's performance under this Declaration, and the expected date (based on the best information available) the affected party will be able to resume performance. As of the date of the Events of Force Majeure, the party asserting force majeure is excused from performing any liability, obligation, or covenant that the party is unable to perform under this Declaration due to the Events of Force Majeure for as long as the Events of Force Majeure continue, and such affected party is relieved of liability for its failure to perform the excused liabilities, obligations, or covenants during the force majeure period. The party asserting an inability to perform shall use commercially reasonable efforts to correct such inability and to resume promptly its performance as required under this Declaration.

18.5 Certain Agreements. In addition to those purposes stated in the foregoing recitals, the other primary purposes of this Declaration is to create certain easements, covenants, restrictions, reservations, rights, obligations, and other provisions that are to apply among the Units, the Commercial Lots, and the Common Areas and Facilities and that are to define and govern the rights, benefits, interests, liabilities, and obligations as between those Owners and/or Persons having ownership or an interest in an individual Unit or Commercial Lot (or a given portion of the Common Areas and Facilities), on the one hand, and those Owners and/or Persons having ownership or an interest in other Units and/or Commercial Lots (or other Common Areas and Facilities), on the other hand.

18.6 Effective Dates and Duration. This Declaration and any amendment or supplement to this Declaration shall take effect as of the date on which they are recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Project and the Mortgagee under each Mortgage then affecting the Project, if and as applicable.

18.7 Notices. Any notice or demand to be given by the Declarant, the Manager, or the Association to any Owner or the Owners collectively or by any Owner or Owners to the Declarant, the Manager, or the Association or another Owner or Person under this Declaration shall be given in writing by personal service, fax or electronic transmittal (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after faxing), express mail, Federal Express, or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner, Declarant, Manager, the Association, or Person at the address set forth for such Owner, Declarant, Manager, the Association, or Person, as applicable, in the Official Records or in the taxing records or, if different, at another address provided by such Owner, Declarant, Manager, the Association, or Person. Any Owner, Declarant, Manager, and the Association may change the address or addresses at which it desires to receive notice under this Declaration upon written notice of such change to the Declarant, Manager, the Association, and each other Owner or Owners affected. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Declarant, Manager, the Association, and/or the Owner or Owners to which the notice is directed; *provided, however*, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice.

18.8 Not A Public Dedication. Nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Project or of any Unit, Commercial Lot, or the Common Areas and Facilities, or portion thereof (including, but not limited to, the Roadways), to the general public or for any public use or public purpose whatsoever, it being the intention and understanding that this Declaration shall be strictly limited to and for the purposes expressly stated in this Declaration solely for the benefit of the Owners. The Association and/or the Owners may take such action as may be necessary or desirable to prevent any such public dedication or appropriation, including, but not limited to, temporary closure of the Project, any of the Units, Commercial Lots, and/or Common Areas and Facilities, or any of the Common Areas and Facilities (including, but not limited to, the Roadways) by barriers at entrance-ways on non-holidays or other appropriate times not materially disruptive to the ownership, use, and occupancy of the Owners and their respective Occupants or Permittees. In no event shall such closure exceed the minimum reasonable time required to prevent such public dedication or appropriation and such closures shall be carried out so as to minimize (to the greatest extent possible) any adverse impact or disruption on the ownership, use, and occupancy of the Owners and their respective Occupants or Permittees and the duties and rights of the Association.

18.9 Severability. Whenever possible, each term, provision, covenant, or condition of this Declaration shall be interpreted in such a manner as to be valid under applicable law; *provided, however*, if any term, provision, covenant, or condition of this Declaration, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions of this Declaration and all applications thereof not held invalid, void, or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18.10 General Provisions. Titles and headings of sections or paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently, or successively from time-to-time. The failure on the part of any Owner or Person entitled to enforce this Declaration to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

18.11 Tenants and Permittees. The benefits and burdens of this Declaration shall extend to each tenant, licensee, concessionaire, guest, family member, invitees, and occupant of each Owner (each, a "Permittee" and, collectively, the "Permittees"). Each Owner shall be solely responsible to ensure that all such Permittees on or using such Owner's Unit and/or Commercial Lot strictly abide by all of the terms, conditions, limitations, restrictions, reservations, obligations, and covenants contained in this Declaration and in the Project Documents. Each Owner shall be solely responsible for the actions (including, any claims for bodily injury or death), any damages caused (including, any property damage), and the obligations and liabilities of all of such Owner's Permittees.

18.12 Relationship of Parties and No Third-Party Rights. This Declaration does not create any joint venture, partnership, undertaking, or business arrangement between the Declarant, the Manager, the Association, Owners, or any other Persons, nor, unless otherwise stated, create any rights or benefits in favor of any third-parties.

18.13 Non-Liability of Employees, Members, or the Association. No officer, member, manager, or representative, agent, or employee of the Declarant, the Manager, or the Association shall be personally liable to the Owners, Permittees, or any of their successors or assigns in the event of any default or breach by the Declarant, the Manager, or the Association or for any amount which may become due to the Owners or their successors or assigns for any obligation arising out of the terms of this Declaration.

*[Intentionally Blank – Signature Page and Acknowledgement to Follow]*

**DECLARANT'S SIGNATURE AND ACKNOWLEDGEMENT PAGE**

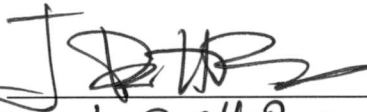
IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the Effective Date.

**RS21 Mayflower Contact Information:** **RS21 MAYFLOWER:**

RS21 Mayflower LLC  
2600 N. Ashton Blvd, #200  
Lehi, Utah 84043  
Attention: Damon Georgelas

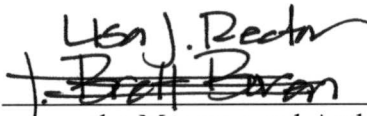
**RS21 MAYFLOWER LLC,**  
a Delaware limited liability company

By: RS21 Mayflower Manager LLC,  
a Utah limited liability company, its Manager

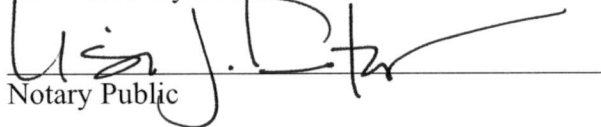
By:   
Name: J. Brett Boren  
Title: Manager and Authorized Signatory

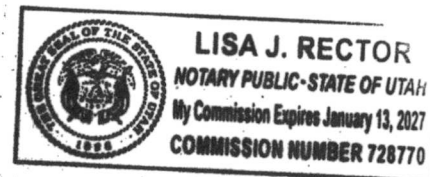
**ACKNOWLEDGMENT OF DECLARANT**

STATE OF UTAH )  
COUNTY OF Utah ) ss.

On September 9, 2024, before me, , Notary Public, personally appeared J. Brett Boren, the Manager and Authorized Signatory of RS21 Mayflower Manager LLC, a Utah limited liability company, the Manager of RS21 Mayflower LLC, a Delaware limited liability company, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public







**EXHIBIT "A"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**MARCELLA LANDING**

---

**LEGAL DESCRIPTION OF PROJECT**

The real property referenced in the foregoing Declaration as the "Project" is located in the County of Wasatch, State of Utah and is more particularly described as follows:

ALL OF UNITS 1 THROUGH 50, COMMERCIAL LOTS "C-1" AND "C-2", ALL REAL PROPERTY CONSISTING OF THE COMMON AREAS AND FACILITIES (AS THIS TERM IS DEFINED IN THIS DECLARATION), AND THE ROADWAYS (AS THIS TERM IS DEFINED IN THIS DECLARATION), AS EACH IS SET FORTH ON THE MARCELLA LANDING CONDOMINIUMS PLAT, RECORDED ON SEPTEMBER 10, 2024, AS ENTRY NO. 549864, IN BOOK 1487, BEGINNING AT PAGE 1437 IN THE OFFICIAL RECORDS OF THE WASATCH COUNTY, UTAH RECORDER.

**The Following is Provided for Information Purposes Only:**

Project Information: The combined gross area for the Project is approximately 510,349 square feet or 11.72 acres of land.

Tax Parcel Identification Numbers: As of the Effective Date, the Tax Parcel Identification Numbers that have been assigned to the Project are: All or portions of 00-0021-4988; 00-0021-8518; 00-0021-8519; and 00-0021-8520.



**EXHIBIT "C"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**MARCELLA LANDING**

---

**BYLAWS OF ASSOCIATION**

*[See Attached]*

**BYLAWS**  
**OF**  
**MARCELLA LANDING TOWNHOMES ASSOCIATION INC.**



**TABLE OF CONTENTS**

Table of Contents	ii
ARTICLE I - GENERAL	1
1.1 Purpose of Bylaws.	1
1.2 Terms Defined in Declaration.	1
1.3 Controlling Laws and Instruments.	1
ARTICLE II - OFFICES	1
2.1 Principal Office.	1
2.2 Registered Office and Agent.	2
ARTICLE III – MEMBERS	2
3.1 Members.	2
3.2 Memberships Appurtenant.	2
3.3 Members' Voting Rights.	2
3.4 Voting by Joint Owners.	2
3.5 Resolution of Voting Disputes.	2
3.6. Transfer of Memberships on Association Books.	3
3.7 Assignment of Voting Rights to Tenants and Mortgagees.	3
ARTICLE IV - MEETING OF MEMBERS	3
4.1 Place of Members' Meetings.	3
4.2 Annual Meetings of Members.	3
4.3 Special Meetings of Members.	3
4.4 Record Date/Members List.	3
4.5 Notice of Members' Meetings.	4
4.6 Proxies at Meetings.	5
4.7 Ballots at Meetings.	5
4.8 Ballots without a Meeting and Electronic Voting.	5
4.9 Revocation of Proxy or Ballot.	6
4.10 Written Consents Without a Meeting.	6
4.11 Telecommunications.	6
4.12 Quorum at Members' Meetings.	7
4.13 Adjournment of Members' Meetings.	7
4.14 Vote Required at Members' Meetings.	7
4.15 Cumulative Voting Not Permitted.	7
4.16 Order of Business.	7
4.17 Expenses of Meetings.	7
4.18 Waiver of Notice.	7
4.19 Signature of Members.	8
ARTICLE V - BOARD OF DIRECTORS	8
5.1 General Powers and Duties of the Board of Directors.	8
5.2 Special Powers and Duties of the Board of Directors.	8
5.3 Qualifications of Directors.	9
5.4 Number of Directors.	10
5.5 Term of Office of Directors and Elections.	10
5.6 Nominating Committee.	11
5.7 Removal of Directors by the Members.	11
5.8 Resignation of Directors.	11
5.9 Vacancies in the Board of Directors.	12
5.10 Appointment of Committees.	12
5.11 General Provisions Applicable to Committees.	12

ARTICLE VI - MEETING OF DIRECTORS	12
6.1 Place of Directors' Meetings.	12
6.2 Annual Meeting of Directors.	12
6.3 Other Regular Meetings of Directors.	13
6.4 Special Meetings of Directors.	13
6.5 Open Meetings/Member Right to Participate.	13
6.6 Closed Meetings.	13
6.7 Notice to Directors of Board Meetings.	14
6.8 Notice to Members of Board Meetings.	14
6.9 Proxies.	14
6.10 Telecommunications.	14
6.11 Quorum of Directors.	15
6.12 Adjournment of Directors' Meeting.	15
6.13 Vote Required at Directors' Meeting.	15
6.14 Officers at Meetings.	15
6.15 Waiver of Notice.	15
6.16 Dissent or Abstention .	16
6.17 Action of Directors Without a Meeting.	16
ARTICLE VII - OFFICERS	16
7.1 Officers, Employees and Agents.	16
7.2 Appointment and Term of Office of Officers.	16
7.3 Resignation and Removal of Officers.	16
7.4 Vacancies in Officers.	17
7.5 President.	17
7.6 Vice President.	17
7.7 Secretary.	17
7.8 Treasurer.	17
7.9 Bonds.	18
7.10 Special Appointments.	18
ARTICLE VIII - INDEMNIFICATION OF OFFICIALS AND AGENTS	18
8.1 Right of Indemnification.	18
8.2 Authority to Insure.	18
ARTICLE IX - MISCELLANEOUS	18
9.1 Amendment/Conflict.	18
9.2 Compensation of Officers, Directors and Members.	19
9.3 Books and Records.	19
9.4 Inspection of Records.	19
9.5 Scope of Inspection Right.	22
9.6 Annual Report.	22
9.7 Statement of Account.	22
9.8 Annual Corporation Reports.	23
9.9 Fiscal Year.	23
9.10 Shares of Stock and Dividends Prohibited.	23
9.11 Loans to Directors, Officers, and Members Prohibited.	23
9.12 Limited Liability.	23
9.13 Minutes and Presumptions Thereunder.	23
9.14 Checks, Drafts, and Documents.	24
9.15 Execution of Documents.	24
9.16 Right to Inspect.	24
9.17 Manner of Giving Notice.	24

9.18	Severability.	25
9.19	Interpretation.	25
ARTICLE X - NOTICE AND HEARING PROCEDURE		25
10.1	Association's Enforcement Rights	25
10.2	Hearing	26
10.3	Decision	27

Exhibit "A" – Action without a Meeting (Form)

**BYLAWS  
OF  
MARCELLA LANDING TOWNHOMES ASSOCIATION INC.**

**ARTICLE I - GENERAL**

**1.1 Purpose of Bylaws.**

These Bylaws are adopted by the Board of Directors ("**Board**") in accordance with UTAH CODE ANN. § 16-6a-206 for the regulation and management of the affairs of Marcella Landing Townhomes Association Inc., a Utah nonprofit corporation (the "**Association**"), organized to be the association to which reference is made in the Declaration of Covenants, Conditions, Restrictions, and Easements for Marcella Landing, recorded in the Official Records of the Wasatch County Recorder, State of Utah, as the same may be amended or supplemented from time-to-time ("**Declaration**"), to perform the functions as provided in the Declaration and to further the interests of Owners of the Units, Commercial Lots, and Common Area Lots within the Project.

**1.2 Terms Defined in Declaration.**

Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

**1.3 Controlling Laws and Instruments.**

These Bylaws are subject to the Utah Revised Nonprofit Corporation Act (UTAH CODE ANN. § 16-6a-101, *et seq.*, as the same may be amended from time-to-time) ("**Nonprofit Act**") and the Utah Condominium Ownership Act (UTAH CODE ANN. § 57-8-101, *et seq.*, as the same may be amended from time-to-time) ("**Condominium Act**") (collectively, the "**Acts**"), the Declaration, and the Articles of Incorporation of the Association ("**Articles**") filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "**Division**"), as any of the foregoing may be amended from time-to-time. Where these Bylaws differ from the Nonprofit Act or the Condominium Act, these Bylaws shall control unless the provisions of either the Nonprofit Act or the Condominium Act, or both, are mandatory and not default provisions.

**ARTICLE II - OFFICES**

**2.1 Principal Office.**

The principal office of the Association shall be at the address identified in the Association's latest annual report filed with the Division. The Board, in its discretion, may change from time-to-time the location of the principal office. A member of the Board shall hereinafter be referred to as a "**Director**".

## **2.2 Registered Office and Agent.**

The Acts require that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles and may be changed by the Association at any time, without amendment to the Articles, by filing a statement as specified by law with the Division.

## **ARTICLE III – MEMBERS**

### **3.1 Members.**

A “**Member**” is the person or, if more than one (1), all persons collectively, who constitute the record owner of a Unit or a Commercial Lot within the Project.

### **3.2 Memberships Appurtenant.**

Each membership shall be appurtenant to the fee simple title to a Unit or a Commercial Lot. The person or persons who constitute the owner of fee simple title to a Unit or a Commercial Lot shall automatically be the holder of the membership appurtenant to that Unit or a Commercial Lot and the membership shall automatically pass with fee simple title to the Unit and Commercial Lot.

### **3.3 Members’ Voting Rights.**

Subject to the provisions in the Declaration and the Articles, each Member shall be entitled to one (1) vote for each Unit or Commercial Lot which the Member owns within the Project.

### **3.4 Voting by Joint Owners.**

In the event there is more than one (1) Owner of a particular Unit or Commercial Lot, the vote relating to such Unit or Commercial Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy, or through ballot, shall be conclusively presumed to be the vote attributable to the Unit or Commercial Lot concerned, unless an objection is immediately made by another Owner of the same Unit or Commercial Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

### **3.5 Resolution of Voting Disputes.**

In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a



disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

### **3.6. Transfer of Memberships on Association Books.**

Transfer of membership shall be made on the books of the Association only upon the presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Unit or Commercial Lot to which the membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the membership as the owner of the membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

### **3.7 Assignment of Voting Rights to Tenants and Mortgagees.**

A Member may assign the Member's right to vote to a tenant occupying the Member's Unit or Commercial Lot or to a mortgagee of the Member's Unit or Commercial Lot for the term of the lease or the mortgage and any sale, transfer, or conveyance of the applicable Unit or Commercial Lot shall, unless otherwise provided in the document of sale, transfer, or conveyance, be subject to any such assignment of voting rights to any tenant or mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Association. Any such assignment of voting rights shall be automatically terminated and revoked upon the sale, transfer, or conveyance of the applicable Unit or Commercial Lot.

## **ARTICLE IV - MEETING OF MEMBERS**

### **4.1 Place of Members' Meetings.**

Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Project, as may be fixed by the Board and specified in the notice of the meeting.

### **4.2 Annual Meetings of Members.**

Annual meetings of the Members shall be held at such time of day as is fixed by the Board and specified in the notice of meeting. The annual meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting.

### **4.3 Special Meetings of Members.**

Special meetings of the Members may be called by the President, the Board, or by Members holding not less than twenty-five percent (25%) of the total votes of all Members (excluding votes of Declarant), or by the Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a special meeting of Members, except as indicated in the notice of special meeting.

#### **4.4 Record Date/Members List.**

4.4.1. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Section 4.4.2 below, unless the Board, in advance of sending notice, sets a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) calendar days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (a) the close of business on the day on which the Board adopts the resolution relating to the exercise of the right; or (b) the close of business on the sixtieth (60<sup>th</sup>) calendar day before the date of the exercise of the right. A record date fixed under this Section 4.4.2 may not be more than seventy (70) calendar days before the meeting or action requiring a determination of Members occurs. A determination of Members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board fixes a new date for determining the right to notice or the right to vote.

4.4.3. The Association shall only be required to prepare a list of the names of the Members, including, without limitation, a list of Members used to take action by written ballot, as provided for in Section 9.3.3 below.

#### **4.5 Notice of Members' Meetings.**

Written notice stating the place, date, and hour of any meeting shall be delivered not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting (plus any time added to effectuate delivery under Section 9.17 below). The notice of an annual, regular, or special meeting shall include: (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party or parties related to a Director, or an entity in which the Director is a trustee or has a financial interest (as set forth in UTAH CODE ANN. § 16-6a-825), if any; (c) notice of any indemnification or advance of expenses to a Director in connection with a legal "proceeding" as defined in the Acts; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary, or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of any real property within the Project owned by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member

intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and the request is received (receipt deemed effective as set forth under Section 9.17 below) by the Secretary or President at least ten (10) calendar days before the Association gives notice of the meeting, plus any time added to effectuate delivery under Section 9.17 below. The notice of a special meeting shall state the purpose or purposes for which the meeting is called.

#### **4.6 Proxies at Meetings.**

A Member entitled to vote at a meeting may vote in person, by ballot, or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised.

#### **4.7 Ballots at Meetings.**

A written ballot may, upon the election of the Board, be used in connection with any annual, regular, or special meeting of Members, thereby allowing Members the choice of either voting in person, by proxy, or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Section 4.8 below and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including, but not limited to, the satisfaction of a quorum requirement.

#### **4.8 Ballots without a Meeting and Electronic Voting.**

The Association may, upon the election of the Board or upon specific request of a Member for a special meeting of the Members, utilize ballots without a meeting to take any action that may be taken at any annual, regular, or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (a) the time by which all ballots must be received has passed so that a quorum can be determined, and (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.8.1 All solicitations for votes by written ballot shall: (a) set forth each proposed action; (b) provide for an opportunity to vote for or against each proposed action; (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than the election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.8.2 Any written ballot shall comply with the requirements in this Section 4.8 and shall be counted equally with the votes of Members in attendance (by person or proxy) at any meeting for every purpose, including, but not limited to, the satisfaction of a quorum requirement.

4.8.3 Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if (a) Members are given at least fifteen (15) calendar days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; (b) Members are given at least thirty (30) calendar days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or (c) considering all the circumstances, the amount of time is otherwise reasonable.

4.8.4 The Association and its Members, by adoption of these Bylaws, agree to allow voting by electronic means. To effectuate electronic voting, ballots may be signed electronically as provided for in Section 4.19 below.

#### **4.9 Revocation of Proxy or Ballot.**

A proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the Secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Unit or the Commercial Lot of the Member and the transfer of the membership on the books of the Association. No proxy shall be valid after the earlier of (i) the day after the meeting of the Members for which the proxy was expressly submitted; or (ii) eleven (11) months from the date of its execution, unless otherwise expressly provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the Secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

#### **4.10 Written Consents Without a Meeting.**

Unless prohibited by the Articles, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice, if one (1) or more written consents, setting forth the action taken, are signed by the Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. Directors may not be elected by written consent, except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section 4.10 is not effective unless all written consents are received within a sixty (60) calendar day period and have not been revoked. A written consent may be given by electronic transmission or other form of communication providing the Association with a complete copy of the written consent, including: (i) the date the written consent was sent and (ii) the signature (including electronic signatures as provided in Section 4.19 below).

#### **4.11 Telecommunications.**

Any or all of the Members may participate in an annual, regular, or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by a means permitted under this Section 4.11 is considered to be present in person at the meeting.

#### **4.12 Quorum at Members' Meetings.**

Except as otherwise required by law or as may otherwise be provided in the Declaration, the Articles, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy, or by ballot, of Members entitled to cast at least twenty-five percent (25%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

#### **4.13 Adjournment of Members' Meetings.**

Members present in person or by proxy at any meeting, whether or not there is a quorum, may adjourn the meeting from time-to-time. If the meeting is adjourned, the Board shall issue a new notice of Members meeting at which meeting the Members that are present in person or by proxy or represented by ballot shall constitute a quorum, except as otherwise provided in the Declaration, the Articles, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) calendar days following such preceding meeting at which a quorum was not present.

#### **4.14 Vote Required at Members' Meetings.**

At any meeting where a quorum is present, action on a matter, other than the election of Directors, is approved if the votes cast favoring the action exceed the votes cast opposing the action unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws. In the case of elections to the Board, a quorum is not required and when there is more than one (1) candidate, the person or persons receiving the highest number of votes shall be elected.

#### **4.15 Cumulative Voting Not Permitted.**

Cumulative voting by Members in the election of Directors shall not be permitted.

#### **4.16 Order of Business.**

Unless otherwise changed by resolution of the Board or the Members, the order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.



**4.17 Expenses of Meetings.**

The Association shall bear the expenses of all regular and annual meetings of Members and of special meetings of Members.

**4.18 Waiver of Notice.**

A Member may waive any notice required by the Acts or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

**4.19 Signature of Members.**

Except as otherwise provided in the Acts, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; i.e., owner, partner, president, director, member, manager, trustee, conservator, guardian, etc. Pursuant to UTAH CODE ANN. § 46-4-201 a signature may not be denied legal effect or enforceability solely because it is in electronic form (i.e., an electronic signature). As used in these Bylaws, the term "electronic" means relating to technology having electrical, digital, magnet, wireless, optical, electromagnetic, or similar capabilities. As used in these Bylaws, the term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a ballot and executed or adopted by a person with the intent to sign the ballot.

**ARTICLE V - BOARD OF DIRECTORS****5.1 General Powers and Duties of the Board of Directors.**

The Board shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit the Board to do so. Without limiting the generality of the foregoing, the Board shall have the power to exercise or cause to be exercised for the Association all of the powers, rights, and authority of the Association not reserved to Members in the Declaration, the Articles, these Bylaws, or the Acts.

**5.2 Special Powers and Duties of the Board of Directors.**

Without limiting the foregoing statement of general powers and duties of the Board or the powers and duties of the Board as set forth in the Declaration, the Board shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time-to-time any and all common area assessments, regular assessments, individual assessments, special assessments, specific assessments, capital improvement assessments, reinvestment fee assessments, benefitted assessments, and all other assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent assessments as provided in the Declaration.

5.2.2 Insurance. The duty to contract and pay premiums for fire, casualty, liability, and any other types of insurance in accordance with the provisions of the Declaration.

5.2.3 Common Areas. The duty to manage and care for the Common Areas and Common Area Lots within the Project and to employ personnel necessary for the care and operation of the Common Areas and Common Area Lots and to contract and pay for necessary or desirable improvements on any real property owned, acquired, or controlled by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with any applicable laws, with the Declaration, the Articles, and these Bylaws.

5.2.5 Borrowing. The power, with the approval of the Members representing at least two-thirds (2/3<sup>rd</sup>) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Declaration, the rules and regulations adopted by the Association, these Bylaws, and any other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers and authority to the extent permitted by and in accordance with any applicable laws, including the Acts.

5.2.8 Rules and Regulations. The power to adopt such rules and regulations with respect to the interpretation and implementation of the Declaration, use of Common Areas and Common Area Lots within the Project, and the use of any other property within the Project, including the Units and Commercial Lots, and to levy fines and penalties for infractions and violations thereof; provided, however, that such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles, and these Bylaws.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Acts. The initial Directors need not be Members of the Association or own a Unit or a Commercial Lot within the Project.

### **5.3 Qualifications of Directors.**

5.3.1 Initial Directors. The initial Directors shall be designated by the Articles or appointed by the Declarant.

5.3.2 Appointment of Directors by Declarant. During the Declarant's period of administrative control established under the Declaration and the Condominium Act ("**Declarant Control Period**"), Declarant has the right to appoint and remove any or all Directors without holding an election and Declarant is not bound by any qualifications or requirements for Directors set forth in these Bylaws.

5.3.3 Elected Directors. Except for the initial Directors or those subsequent Directors appointed by the Declarant, a Director must be a natural person eighteen (18) years of age or over and an Owner of a Unit or a Commercial Lot within the Project or, if the Owner of any such Unit or a Commercial Lot within the Project is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his or her Unit or Commercial Lot within the Project, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative conveys or transfers title to its Unit or Commercial Lot within the Project, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Notwithstanding anything in this Section 5.3 to the contrary, none of the initial Directors, as designated in the Articles, or those Directors subsequently appointed by the Declarant shall be required to have any ownership interest in any Unit or Commercial Lot within the Project in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office.

### **5.4 Number of Directors.**

The number of Directors of the Association shall be three (3) or five (5). Subject to such limitations, the number of Directors shall be three (3) until changed pursuant to this Section 5.4. The number of Directors may be increased beyond three (3) Directors to five (5) by the majority vote of the Board or by the Declarant during the Declarant Control Period.

### **5.5 Term of Office of Directors and Elections.**

The affairs of the Association shall be managed by a Board composed of three (3) or five (5) individuals, unless changed pursuant to Section 5.4 above. Except for Directors appointed by

the Declarant, the Directors of the Board shall be elected at a meeting of the Members by any authorized and lawful procedure adopted by the Board, to serve as follows:

At each annual Meeting of the Members, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years. In the initial election of Directors, the method of election shall provide that the term of an odd number of Directors (at least two (2) less than the entire Board) shall expire in the next odd-numbered year, and the term of an even number of Directors shall expire in the next even-numbered year.

Directors newly elected at the annual meeting of the Members shall take office immediately. Newly elected Directors are invited to attend Board meetings to familiarize themselves with the Association's procedures prior to taking office. Only Members who are not in violation of the Declaration, these Bylaws, and the Association rules and regulations shall be eligible to run for a position on the Board.

In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected having the highest number of votes cast in favor of their election, are elected to the Board. When only one (1) Director position is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board.

#### **5.6 Nominating Committee.**

Nominations for election to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting of the Members. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two (2) or more Members of the Association. The nominating committee may be appointed by the Board prior to each annual meeting of the Members. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among the Members.

#### **5.7 Removal of Directors by the Members.**

As provided in Section 5.3.2 above, Declarant may remove any or all of the Directors during the Declarant Control Period. At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association and any Director who shall be absent from three (3) consecutive Board meetings shall be automatically removed from the Board, unless determined otherwise by the Board. Notwithstanding the foregoing, the removal provisions of this Section 5.7 shall not apply to any Director appointed by the Declarant, unless the Declarant Control Period has terminated.

### **5.8 Resignation of Directors.**

Any Director may resign at any time by giving written notice to the President, to the Secretary, or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver and file with the Division a statement setting forth (a) that person's name; (b) the name of the Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or officer (for example, the Articles or any annual renewal of the Association); and (d) the date on which the person ceased to be a Director or officer of the Association or a statement that the person did not hold the position for which the person was named in the report or other document.

### **5.9 Vacancies in the Board of Directors.**

Any vacancy occurring in the Board shall be filled by the Declarant during the Declarant Control Period or thereafter by an affirmative vote of a majority of the remaining Directors, though not less than a quorum of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor-in-office. Except pursuant to Section 5.4 above, a directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board. Should any vacancy of the Board remain unfilled for a period of two (2) months, the Members may, at a special meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

### **5.10 Appointment of Committees.**

The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint one (1) or more committees which shall consist of two (2) or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board in the management of the affairs of the Association, except authority with respect to those matters specified in the Acts as matters which such committee may not have and exercise the authority of the Board.

### **5.11 General Provisions Applicable to Committees.**

The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law or under the Declaration, the Articles, or these Bylaws. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board shall not be applicable to meetings of committees of the Board.

## **ARTICLE VI - MEETING OF DIRECTORS**



**6.1 Place of Directors' Meetings.**

Meetings of the Board shall be held at the principal office of the Association or at such other place, within or convenient to the Project, as may be fixed by the Board and specified in the notice of the meeting.

**6.2 Annual Meeting of Directors.**

The annual meeting of the Board shall be held on the same date as, or within ten (10) business days following, the annual meeting of Members. The business to be conducted at the annual meeting of the Board shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board is elected or if the time and place of the annual meeting of the Board is announced at the annual meeting of Members.

**6.3 Other Regular Meetings of Directors.**

The Board may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. The resolution of meeting schedule shall be given to all Members of the Association at least forty-eight (48) hours (plus any time added to effectuate delivery under Section 9.17 below) before the first meeting scheduled. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

**6.4 Special Meetings of Directors.**

Special meetings of the Board may be called by the President or any two (2) members of the Board other than the President. Any special meeting of the Board not regularly scheduled under Section 6.3 above shall require the same notice as Section 6.3.

**6.5 Open Meetings/Member Right to Participate.**

Except as provided in Section 6.6 below, a Board meeting, whether in person or by means of electronic communication, at which the Board can take binding action shall be open to each Member or the Member's authorized representative if the representative is designated in writing. At each meeting, the Board shall provide each Member a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. A Director may not avoid or obstruct the requirements of this Section 6.5. However, nothing in this Section 6.5 shall affect the validity or enforceability of an action of a Board.

**6.6 Closed Meetings.**

The Board may close a meeting to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel or sensitive matter; (d) discuss a matter relating to contract negotiations, including, review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

If after a vote of the majority of all other Directors, it is determined that a Director has not maintained the confidentiality of any matter covered in the previous paragraph that is addressed at a closed meeting (a "**Confidential Matter**"), the non-offending Directors may take one of the two following steps: (1) exclude the offending Director from any closed meetings at which that Confidential Matter is addressed, or (2) create a committee to address the Confidential Matter and exclude the offending Director from that committee.

#### **6.7 Notice to Directors of Board Meetings.**

In the case of all meetings of the Board for which notice is required by these Bylaws, notice stating the place, date, and hour of the meeting shall be given not less than two (2) nor more than thirty (30) calendar days before the date of the meeting (plus any time added to effectuate delivery under Section 9.17 below), by mail, fax, e-mail, electronic means, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board. If by telephone such notice shall be deemed to be effective when given by telephone to the Director. If given personally, such notice shall be deemed effective upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice to the Director or waiver of such meeting.

#### **6.8 Notice to Members of Board Meetings.**

At least forty-eight (48) hours before an open Board meeting (plus any time added to effectuate delivery under Section 9.17 below), the Association shall give written notice of the meeting via e-mail to each Member who requests notice of a meeting, unless: (a) notice of the meeting is included in a meeting schedule that was previously provided to the Member; or (b) the meeting is to address an emergency and each Director receives notice (receipt deemed effective as set forth under Section 9.17 below) of the meeting less than forty-eight (48) hours before the meeting. The notice to the Members shall: (a) be delivered to the Member by e-mail, to the e-mail address that the Member provides to the Board or the Association (or via mail if requested in writing by the Member); (b) state the time and date of the meeting; (c) state the location of the meeting; and (d) if a Director may participate by means of electronic communication, provide the information necessary to allow the member to participate by the available means of electronic communication.

## **6.9 Proxies.**

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (a) to another Director who is present at the meeting; and (b) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.9, Directors may not vote or otherwise act by proxy.

## **6.10 Telecommunications.**

The Board may permit any Director to participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting. If a Director is to participate in a Board meeting by electronic communication, the Board shall provide the information necessary to allow the Owners entitled to notice of the Board meeting under Section 6.8 to participate by the available electronic means.

## **6.11 Quorum of Directors.**

A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person, by ballot, or by proxy, if applicable.

## **6.12 Adjournment of Directors' Meeting.**

Directors present at any meeting of the Board may adjourn the meeting from time-to-time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods not to exceed thirty (30) calendar days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

## **6.13 Vote Required at Directors' Meeting.**

At any meeting of the Board, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws.

## **6.14 Officers at Meetings.**

The President shall act as chairman and the Board shall appoint a Secretary to act at all meetings of the Board.

#### **6.15 Waiver of Notice.**

A waiver of notice of any meeting of the Board, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

#### **6.16 Dissent or Abstention.**

The right of dissent or abstention pursuant to Section 6.15 above is not available to a Director who votes in favor of the action taken.

#### **6.17 Action of Directors Without a Meeting.**

The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Such approval may be provided by electronic communication. Any action so approved shall be in accordance with § 16-6a-813 of the Nonprofit Act and have the same effect as though taken at a meeting of the Directors. The form attached hereto as Exhibit "A" may be utilized by the Board when taking action without a meeting.

### **ARTICLE VII - OFFICERS**

#### **7.1 Officers, Employees and Agents.**

The officers of the Association shall be natural persons eighteen (18) years of age or over and shall consist of a President, a Secretary, a Treasurer, and such other officers, assistant officers, employees, and agents as may be deemed necessary by the Board. Officers other than the Secretary and the Treasurer must be Directors. The same person may simultaneously hold more than one office.

#### **7.2 Appointment and Term of Office of Officers.**

During the Declarant Control Period, the Declarant may appoint any and all of the officers of the Association. After the expiration of the Declarant Control Period, the officers shall be appointed by the Board at the annual meeting of the Board and shall hold office, subject

to the pleasure of the Board, until the next annual meeting of the Board or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

### **7.3 Resignation and Removal of Officers.**

An officer may resign at any time by giving written notice of resignation to the Association. The resignation of an officer is effective when the notice is received by the Association, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board may: (a)(i) permit the officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b)(i) remove the officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board may remove any officer at any time with or without cause. An officer who resigns, is removed, or whose appointment has expired may deliver and file a statement with the Division in the same form as provided in Section 5.8 above.

### **7.4 Vacancies in Officers.**

Any vacancy occurring in any position as an officer may be filled by appointment by the Declarant during the Declarant Control Period or thereafter by the Board. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor-in-office.

### **7.5 President.**

The President shall be a member of the Board and shall be the principal executive officer of the Association and, subject to the control of the Board, shall direct, supervise, coordinate, and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board and of the Members of the Association.

### **7.6 Vice President.**

The Vice President, if any, may act in place of the President in case of his death, absence, or inability to act, and shall perform such other duties and have such authority as is from time-to-time delegated by the Board or by the President.

### **7.7 Secretary.**

The Secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports, and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board, and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time-to-time, be



assigned to him by the Board or by the President. The Board may appoint one or more assistant secretaries who may act in place of the Secretary in case of his death, absence, or inability to act. The duties of the Secretary may be delegated to a property management company.

#### **7.8 Treasurer.**

The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board may, from time-to-time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time-to-time be assigned to him by the Board or by the President. The Board may appoint one or more assistant Treasurers who may act in place of the Treasurer in case of his death, absence, or inability to act. The duties of the Treasurer may be delegated to a property management company.

#### **7.9 Bonds.**

The Association may pay for fidelity bonds covering officers or other persons handling funds of the Association as provided for in the Declaration. The Association shall pay the premiums for any such bonds acquired.

#### **7.10 Special Appointments.**

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time-to-time, determine.

### **ARTICLE VIII - INDEMNIFICATION OF OFFICIALS AND AGENTS**

#### **8.1 Right of Indemnification.**

The Association shall indemnify any Director, officer, employee, fiduciary, and agent (including, without limitation, the Manager under the Declaration) to the fullest extent allowed under the Acts, or any replacement sections thereof.

#### **8.2 Authority to Insure.**

The Association may purchase and maintain liability insurance on behalf of any Director, officer, employee, fiduciary, and agent (including, without limitation, the Manager under the Declaration) against any liability claimed or asserted against such Director, officer, employee, fiduciary, and/or agent and incurred by such persons in such capacity or arising out of such persons status as such, including, but not limited to, liabilities for which such persons might not be entitled to indemnification under these Bylaws.

## ARTICLE IX - MISCELLANEOUS

### 9.1 Amendment/Conflict.

These Bylaws may be amended, at any regular, annual, or special meeting of the Board, by a vote of the majority of the Board. In addition, the Members may amend these Bylaws even though these Bylaws may also be amended by the Board. Amendments to these Bylaws by Members shall be made in accordance with the Acts. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

### 9.2 Compensation of Officers, Directors, and Members.

No Director shall have the right to receive any compensation from the Association for serving as a Director, except for reimbursement of costs and expenses as may be approved by resolution of disinterested members of the Board and except as may otherwise be approved by the Members. Officers, agents, and employees shall receive such reasonable compensation as may be approved by the Board. Appointment of a person as an officer, agent, or employee shall not, of itself, create any right to compensation.

### 9.3 Books and Records.

9.3.1 The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board; (b) a record of all actions taken by the Members or Board without a meeting; (c) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; (d) a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board; and (e) a copy of the Declaration, as the same may be amended.

9.3.2 The Association shall maintain appropriate accounting records.

9.3.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the names and addresses of all Members: (a) in alphabetical order, and (b) showing the number of votes each Member is entitled to vote.

9.3.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

9.3.5 The Association shall keep a copy of each of the following records at its principal office: (a) the Declaration; (b) the Articles; (c) these Bylaws; (d) any resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Members; (e) the minutes of all Member meetings for a period of three (3) years; (f) records of all actions taken by Members without a meeting; (g) all written communications to Members generally as Members for a period of three (3) years; (h) a list of the names and business or home addresses of its current Directors and officers; (i) a copy of its most recent

annual report; (j) all financial statements prepared for periods ending during the last three (3) years; (k) the most recent approved Board meeting minutes; and (l) the most recent budget and financial report.

9.3.6 If the Association has an active website, the Association shall make the documents described in Section 9.3.5 above available to all Members, free of charge, through the website; or, if the Association does not have an active website, make physical copies of the documents described in Section 9.3.5 above available to Members during regular business hours at the Association's address registered with the Division.

#### **9.4 Inspection of Records.**

9.4.1 A Director or Member is entitled to inspect and copy any of the records of the Association described in Section 9.3.5 above: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

9.4.2 In addition to the rights set forth in Section 9.4.1 above, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Section 9.4.3 below; and (ii) gives the Association written demand.

9.4.3 A Director or Member may inspect and copy the records described in Section 9.4.2 above only if: (a) the demand is made: (i) in good faith, and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

9.4.4 Notwithstanding any other provision in these Bylaws, for purposes of this Section 9.4: (a) "Member" includes: (i) a beneficial owner whose membership interest is held in a voting trust, and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) "proper purpose" means a purpose reasonably related to the demanding Member's or Director's interest as a Member or Director.

9.4.5 The right of inspection granted by this Section 9.4 may not be abolished or limited by the Articles or these Bylaws.

9.4.6 This Section 9.4 does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article IX, to compel the production of corporate records for examination.

9.4.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by Section 9.4.2 above for any purposes other than those set forth in the demand made under Section 9.4.3.

9.4.8 The Association may redact the following information from any document the Association produces for inspection or copying (a) a Social Security number; (b) a bank account number; or (c) any communication subject to attorney-client privilege.

- 9.4.9 In a written request to inspect or copy documents, a Member shall include:
- (i) the Association's name;
  - (ii) the Member's name;
  - (iii) the Member's property address;
  - (iv) the Member's e-mail address;
  - (v) a reasonable detailed description of the documents requested; and
  - (vi) any election or request described in Subsection (b) below.

In a written request to inspect or copy documents, a Member may:

- (i) elect whether to inspect or copy the requested documents;
- (ii) if the Member elects to copy the requested documents, request hard copies or electronic scans of the documents; or
- (iii) subject to Section 9.4.10 below, request that:
  - (A) the Association make the copies or electronic scans of the requested documents;
  - (B) a recognized third-party duplicating service make the copies or electronic scans of the requested documents;
  - (C) the Member be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents; or
  - (D) the Association e-mail the requested documents to an e-mail address provided in the request.

9.4.10 If the Association produces copies or electronic scans of the required or requested documents, the copies or electronic scans shall be legible and accurate and the Member shall pay the Association the reasonable costs and expenses of the copies or electronic scans and for the time spent meeting with the Member, which may not exceed: (a) the actual cost and expenses that the Association paid to a recognized third-party duplicating service to make the copies or electronic scans; or (b) if an employee, manager, or other agent of the Association makes the copies or electronic scans, ten cents (\$.10) per page and fifteen dollars (\$15.00) per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.

9.4.11 If a Member requests a recognized third-party duplicating service make the copies or electronic scans, the Association shall arrange for the delivery and pick-up of the original documents; and the Member shall pay the duplicating service directly. If a Member

requests to bring imaging equipment to the inspection, the Association shall provide the necessary space, light, and power for the imaging equipment.

9.4.12 Subject to Section 9.4.13 below, if in response to a Member's request to inspect or copy documents, the Association fails to comply with a provision of this Section 9.4, the Association shall pay:

- (a) the reasonable costs and expenses of inspecting and copying the requested documents;
- (b) for items described Section 9.3.5 below, twenty-five dollars (\$25.00) to the Member who made the request for each day the request continues unfulfilled, beginning the sixth (6<sup>th</sup>) business day after the day on which the Member made the request; and
- (c) reasonable attorney fees and costs incurred by the Member in obtaining the inspection and copies of the requested documents.

9.4.13 The Association is not liable for identifying or providing a document in error, if the Association identified or provided the erroneous document in good faith.

## **9.5 Scope of Inspection Right.**

A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 above includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. The Association may comply with a Director or Member's demand to inspect the record of Members under Section 9.3.3 above by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Section 9.3.3; and (b) is compiled no earlier than the date of the Director or Member's demand. Concerning financial statements, by no later than fifteen (15) calendar days after the day on which the Association receives a written request of any Member (receipt by the Association deemed effective as set forth under Section 9.17 below), the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board, a membership list or any part thereof may not be obtained, distributed, or used by any person or for any purpose unrelated to a Member's interest as a Member.

## **9.6 Annual Report.**

The Board shall cause to be prepared and distributed to each Member, and any first mortgagee of a Member who has filed a written request therefor, not later than ninety (90) calendar days after the close of each fiscal year of the Association, an annual report containing the following: (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and



addresses of current Members, may be found. The Board shall also annually distribute to the Members a summary of the latest reserve analysis or update and a full copy to any Member making such request.

#### **9.7 Statement of Account.**

Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Unit or a Commercial Lot within the Project or any person with any right, title, or interest in a Unit or a Commercial Lot within the Project or intending to acquire any right, title, or interest in a Unit or a Commercial Lot, the Association shall give, within ten (10) calendar days after the receipt of such request (receipt by the Association deemed effective as set forth under Section 9.17 below), a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Unit and/or the Commercial Lot within the Project, and the amount of the assessments for the current fiscal period of the Association payable with respect to such Unit and/or Commercial Lot within the Project. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

#### **9.8 Annual Corporation Reports.**

The Association shall file with the Division, within the time prescribed by law, annual corporate reports, renewals, and filings in such form and containing the information required by law and shall pay the fee for such filings as prescribed by law.

#### **9.9 Fiscal Year.**

The fiscal year of the Association shall be the calendar year and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board without amending these Bylaws.

#### **9.10 Shares of Stock and Dividends Prohibited.**

The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors, or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes, and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income or profit.

#### **9.11 Loans to Directors, Officers, and Members Prohibited.**

No loan shall be made by the Association to its Members, Directors, or officers, and any Director, officer, or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

**9.12 Limited Liability.**

The Association, the Board, and any agent or employee of the Association or the Board shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

**9.13 Minutes and Presumptions Thereunder.**

Minutes or any similar record of the meetings of Members or of the Board, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

**9.14 Checks, Drafts, and Documents.**

All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time-to-time, shall be determined by resolution of the Board.

**9.15 Execution of Documents.**

The Board, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**9.16 Right to Inspect.**

Notwithstanding any other provisions of this Article IX, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association or that Member's agent.

**9.17 Manner of Giving Notice.**

Notwithstanding any other provision in the Declaration, the Articles, these Bylaws, or any rules and regulations adopted by the Association, the Association may provide notice to Owners orally or by electronic means, including text message, e-mail, or the Association's

website, if any, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given by the Association will be deemed received and effective upon the earlier to occur of the following:

(a) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

(b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (i) when received; (ii) six (6) calendar days after it is mailed; or (iii) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

(c) when sent via electronic means, such as an e-mail, text message, or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

(d) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

(e) when hand delivered, the notice is deemed effective immediately upon delivery;

(f) when notice is given orally, the notice is deemed effective when communicated; or

(g) when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

#### **9.18 Severability.**

Invalidation of any provision of the Governing Documents by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

#### **9.19 Interpretation.**

The provisions of the Declaration, the Articles, and these Bylaws are intended to be liberally construed to effectuate its purpose of creating a general and coordinated plan for the development, use, and operation of a mixed-use commercial and residential project and for the maintenance of the Common Areas, the Common Area Lots, and certain other areas within the Project. The article and section headings in these Bylaws have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, and neuter shall each include the

masculine, feminine, and neuter. Except for judicial construction and express Utah law, the Board shall have the exclusive right to construe and interpret the provisions of these Bylaws, and amendments thereto. In the absence of any adjudication by a court of competent jurisdiction or express Utah law to the contrary, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by the Declaration, the Articles, and these Bylaws.

## **ARTICLE X - NOTICE AND HEARING PROCEDURE**

### **10.1. Association's Enforcement Rights.**

In the event of an alleged violation of the Declaration, the Articles, these Bylaws, or the rules and regulations of the Association by a Member or a tenant occupying the Member's Unit or Commercial Lot ("**Respondent**"), the Board shall have the right, upon an affirmative vote of a majority of all Directors, to take any one (1) or more of the actions and to pursue one (1) or more of the remedies permitted by law or equity or under the provisions of the Declaration, these Bylaws, or the rules and regulations of the Association. The failure of the Board to enforce the rules and regulations of the Association, these Bylaws, or the Declaration shall not constitute waiver of the right to enforce the same thereafter. The remedies set forth and provided by law or equity or in the Declaration, these Bylaws, or the rules and regulations of the Association shall be cumulative, and none shall be exclusive.

### **10.2. Hearing.**

(a) At the hearing, the Respondent must show cause, if any cause can be shown, why said Respondent is not in violation of the Declaration, the Articles, these Bylaws, or the rules and regulations of the Association, as set forth in the notice of violation from the Board.

(b) Oral evidence shall be taken only on oath or affirmation administered by a Director. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Board.

(c) The Board, the Respondent, and any other parties (for example, another complainant) taking part in the hearing shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against the Board, the Respondent, and/or any other parties. If Respondent does not testify in his or her own behalf, the Respondent may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence of witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions.

(e) Neither the Board (or other complainant) nor the Respondent need be in attendance at the hearing. The Board may close the meeting to the general membership of the Association if the Board believes the discussion is likely to cause undue embarrassment or violate the individual's reasonable expectation of privacy.

(f) In rendering a decision, official notice may be taken at any time of any provision of the Declaration, these Bylaws, the rules and regulations of the Association, or any generally understood matter within the working of the Association. Persons present at the hearing shall be informed of the matters to be noticed by the Board and these matters shall be made a part of the record of proceedings.

(g) The Board may grant continuances on a showing of good cause.

(h) Whenever the Board has commenced to hear the matter and a Director is forced to withdraw prior to a final determination by the Board, the remaining Directors shall continue to hear and decide the case.

### **10.3. Decision.**

If a Respondent fails to appear at a hearing, the Board may take action based upon the evidence presented to it without further notice to the Respondent. However, the Respondent may make any showing by way of mitigation. After all testimony and documentary evidence has been presented to the Board, the Board may vote by secret written ballot, or otherwise, upon the matter, with a majority of the entire Board controlling. A copy of the notice of adjudication of the Board may be posted by the Board at a conspicuous place within the Project, and a copy shall be provided by the President of the Association to each person directly involved in the matter and his or her attorney, if any, in accordance with the notice provision(s) set forth in the Declaration, if any. The notice of adjudication may include the following: (a) the terms of any disciplinary action; (b) the levy of any assessment of fine; or (c) such other actions or remedies as the Board deems appropriate. The decision of the Board shall become effective ten (10) business days after it is given to each Respondent, unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration at any time within fifteen (15) business days following service of its decision on the involved persons, on its own motion or on petition by any party. However, no action against a Respondent arising from the alleged violation shall take effect prior to the expiration of the later of (a) fifteen (15) business days after each Respondent's receipt of the notice of hearing; or (b) ten (10) business days after the hearing required herein.

***[Intentionally Blank – Certificate to Follow]***



**CERTIFICATE OF PRESIDENT**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting President of Marcella Landing Townhomes Association Inc., a Utah nonprofit corporation ("Association"); and

2. The foregoing Bylaws constitute the Bylaws of the Association duly adopted by the Board of the Association by that certain Action by Unanimous Written Consent of the Board of Directors of Marcella Landing Townhomes Association.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 10<sup>th</sup> day of September, 2024.

**ASSOCIATION:**

**MARCELLA LANDING TOWNHOMES ASSOCIATION INC.,**  
a Utah non-profit corporation

By: \_\_\_\_\_

Print Name: Jing Jiao

Its: President

STATE OF UTAH, )

:ss.

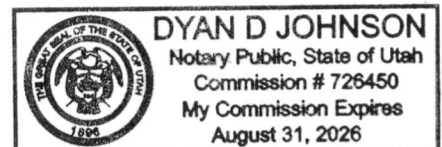
COUNTY OF Summit )

On this 10<sup>th</sup> day of September, 2024, personally appeared before me Jing Jiao, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he/she is the President of Marcella Landing Townhomes Association Inc., a Utah nonprofit corporation, and that the foregoing Bylaws were signed by him/her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the Bylaws on behalf of the Association and for its stated purpose.

My Commission Expires:

Aug. 31 2026

Dyan D Johnson  
Dyan D Johnson  
NOTARY PUBLIC  
Residing at: Salt Lake



**EXHIBIT "A"**  
**TO**  
**BYLAWS**  
**OF**  
**MARCELLA LANDING TOWNHOMES ASSOCIATION INC.**

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(Action without a Meeting – Form)

Notice of Proposed Action Without a Meeting of the Board of Directors  
Pursuant to UTAH CODE ANN. § 16-6a-813  
(E-Mail Communication)

1. Stipulations: All Board members stipulate that this e-mail communication and any response by e-mail will be deemed a written communication and the e-mail address of each Board member will act as their signature to the communication. Any response by a Board member must be sent by a "reply to all." A response sent to all Board members in this e-mail communication will be deemed a written response received by the Association.

2. Proposed Action: The following action is proposed to be taken by the Association:

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3. Response Options: Each Board member may respond to the proposed action in one of the following three ways (or language which is clear and the equivalent of the following):

- a. With a "reply to all" e-mail stating, *"I vote in favor of the proposed action"*;
- b. With a "reply to all" e-mail stating, *"I abstain from the vote on the proposed action"*; or
- c. With a "reply to all" e-mail stating, *"I object to the proposed action being taken without a meeting."*

4. Time to Respond: This Notice of Proposed Action Without a Meeting of the Board of Directors ("Notice") must be responded to by all Board members not later than the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before \_\_\_\_\_ .m. (Mountain Time).

5. Effect of Untimely Response: An untimely response by a Board member will have the following effect:

- a. Result in the non-responsive Board member abstaining from the vote on the proposed action; and
- b. Result in the non-responsive Board member failing to timely demand the proposed action not be taken without a meeting.

6. When Action is Deemed Taken: The proposed action is taken only if at the end of the time stated in Section 4 above:

- a. The affirmative votes are timely received and not timely revoked, which votes equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members or Directors then in office were present and voted; and
- b. There has not been received a demand pursuant to Section 3.c. above that the action not be taken without a meeting, unless such demand has been revoked by the time stated in Section 4 above.

7. Right to Revoke: A Board member or Director who has voted, abstained, or demanded the action not be taken without a meeting pursuant to Section 3 and/or Section 5 above may revoke the vote, abstention, or demand that the action not be taken without a meeting by sending a follow-up "reply to all" e-mail before the expiration of the time set forth in Section 4 above and stating the revocation and stating the desired response option provided for in Section 3 above.

8. Effective Date: The effective date of the action deemed taken under Section 6 above shall be the date and time set forth in Section 4 above, unless a later date and time for the effective date is specified in the proposed action to be taken in Section 2 above.

9. Conditions for E-Mail Communications:

- a. An electronic transmission communicating a vote, abstention, demand, or revocation is considered for all purposes to be written, signed, and dated for purposes of this action if the e-mail is delivered with information from which the Board, as the recipient party to the e-mail communication can determine:
  - i. that the electronic transmission is transmitted by the Board member or Director; and
  - ii. the date on which the e-mail is transmitted.
- b. The date on which the e-mail is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed.
- c. For purposes of this proposed action, e-mail communications to Board members are not effective until received.

10. Statutory Effect: Pursuant to UTAH CODE ANN. § 16-6a-813, action taken pursuant to this e-mail communication has the same effect as action taken at a meeting of Directors and may be described as an action taken at a meeting of Directors in any document.

11. Minutes: Notwithstanding the statutory effect provided for in Section 10 above, at the next regular Board meeting any action taken pursuant to this e-mail communication and action without a meeting shall be announced at the meeting and recorded in the minutes of the Board. No action taken without a meeting shall be deemed void or ineffective if not announced at the next Board meeting or if not included in the Board minutes, or both.

**EXHIBIT "D"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**MARCELLA LANDING**

**ALLOCATED INTEREST**

<b>Unit or Commercial Lot Identifying Number</b>	<b>Unit or Commercial Lot Square Footage</b>	<b>Unit or Commercial Lot Type</b>	<b>Par Value</b>	<b>No. of Votes Per Unit or Commercial Lot</b>	<b>Allocated Interest</b>
1	5,414	Residential Unit	1.00	1.00	0.018%
2	5,414	Residential Unit	1.00	1.00	0.018%
3	5,414	Residential Unit	1.00	1.00	0.018%
4	5,414	Residential Unit	1.00	1.00	0.018%
5	5,414	Residential Unit	1.00	1.00	0.018%
6	5,586	Residential Unit	1.00	1.00	0.019%
7	5,586	Residential Unit	1.00	1.00	0.019%
8	5,586	Residential Unit	1.00	1.00	0.019%
9	5,586	Residential Unit	1.00	1.00	0.019%
10	5,414	Residential Unit	1.00	1.00	0.018%
11	5,414	Residential Unit	1.00	1.00	0.018%
12	5,414	Residential Unit	1.00	1.00	0.018%
13	5,414	Residential Unit	1.00	1.00	0.018%
14	5,586	Residential Unit	1.00	1.00	0.019%
15	5,586	Residential Unit	1.00	1.00	0.019%
16	5,586	Residential Unit	1.00	1.00	0.019%
17	5,586	Residential Unit	1.00	1.00	0.019%
18	5,586	Residential Unit	1.00	1.00	0.019%
19	5,586	Residential Unit	1.00	1.00	0.019%
20	5,414	Residential Unit	1.00	1.00	0.018%
21	5,414	Residential Unit	1.00	1.00	0.018%
22	5,414	Residential Unit	1.00	1.00	0.018%
23	5,414	Residential Unit	1.00	1.00	0.018%
24	5,414	Residential Unit	1.00	1.00	0.018%
25	5,414	Residential Unit	1.00	1.00	0.018%
26	6,647	Residential Unit	1.00	1.00	0.022%
27	6,647	Residential Unit	1.00	1.00	0.022%
28	6,647	Residential Unit	1.00	1.00	0.022%
29	5,414	Residential Unit	1.00	1.00	0.018%
30	5,414	Residential Unit	1.00	1.00	0.018%

D-74



31	5,414	Residential Unit	1.00	1.00	0.018%
32	4,669	Residential Unit	1.00	1.00	0.016%
33	4,669	Residential Unit	1.00	1.00	0.016%
34	4,669	Residential Unit	1.00	1.00	0.016%
35	6,647	Residential Unit	1.00	1.00	0.022%
36	6,647	Residential Unit	1.00	1.00	0.022%
37	6,647	Residential Unit	1.00	1.00	0.022%
38	6,647	Residential Unit	1.00	1.00	0.022%
39	5,510	Residential Unit	1.00	1.00	0.019%
40	5,510	Residential Unit	1.00	1.00	0.019%
41	5,510	Residential Unit	1.00	1.00	0.019%
42	5,510	Residential Unit	1.00	1.00	0.019%
43	5,414	Residential Unit	1.00	1.00	0.018%
44	5,414	Residential Unit	1.00	1.00	0.018%
45	5,414	Residential Unit	1.00	1.00	0.018%
46	5,414	Residential Unit	1.00	1.00	0.018%
47	5,414	Residential Unit	1.00	1.00	0.018%
48	5,414	Residential Unit	1.00	1.00	0.018%
49	5,414	Residential Unit	1.00	1.00	0.018%
50	5,414	Residential Unit	1.00	1.00	0.018%
C-1	9,817	Commercial Lot	1.00	1.00	0.033%
C-2	7,997	Commercial Lot	1.00	1.00	0.027%
	<b>Total Square Footage</b>				<b>Total Allocated Interest*</b>
	297,014				1.00

\* Total Allocated Interest may be slightly more or less than 100% due to rounding.