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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
CAPSTONE CONDOMINIUMS**

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
CAPSTONE CONDOMINIUMS**

A Utah Condominium Project

This AMENDED AND RESTATED DECLARATION FOR CAPSTONE CONDOMINIUMS is effective as of the date of the recording in the Salt Lake County Recorder's Office as directed by CAPSTONE CONDOMINIUM ASSOCIATION ("Association").

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1.
- B. The real property situated in Salt Lake County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), was previously submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project now consisting of residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the "Condominium Project").
- C. The Property was first made subject to the Enabling Declaration for Capstone Condominium Project Phase No. 1, recorded with the Salt Lake County Recorder on November 5, 1970 as Entry Number 2357254.
- D. The Property was next made subject to the Enabling Declaration for Capstone Condominium Project Phase No. Two, recorded with the Salt Lake County Recorder on February 24, 1972 as Entry Number 2438959.
- E. The Property was then made subject to the Revised and Restated Declaration of Condominium of the Capstone Condominium Project, recorded with the Salt Lake County Recorder on April 12, 1977 as Entry Number 2930711 ("Revised Declaration").
- F. The Revised Declaration was amended by an instrument recorded with the Salt Lake County Recorder on June 13, 1990 as Entry Number 4928332.
- G. The Revised Declaration was next amended by an instrument entitled "Revised Declaration and Bylaws of the Capstone Condominium Project" recorded with the Salt Lake County Recorder on October 14, 1994 as Entry Number 5943416.
- H. The Revised Declaration was next amended by an instrument entitled "Revised Declaration and Bylaws of the Capstone Condominium Project" recorded with the Salt

Lake County Recorder on October 14, 1994 as Entry Number 5943416 (“2nd Revised Declaration”).

- I. The 2nd Revised Declaration was first amended by an instrument recorded with the Salt Lake County Recorder on February 5, 1999 as Entry Number 7247450.
- J. The 2nd Revised Declaration was next amended by the Amendment to Revised Declaration and Bylaws of Capstone Condominium Project, which was recorded with the Salt Lake County Recorder on October 27, 1999 as Entry Number 7499187.
- K. The 2nd Revised Declaration was then replaced and superseded by the “Revised Declaration and By-Laws of the Capstone Condominium Project” recorded with the Salt Lake County Recorder on July 7, 2003, as Entry No. 8720866 (“2003 Declaration”).
- L. The Association, consistent with the 2003 Declarations, hereby adopts this AMENDED AND RESTATED DECLARATION FOR CAPSTONE CONDOMINIUMS (hereinafter the “DECLARATION”), which (along with any future amendments) shall be the sole declaration for Capstone Condominiums. This DECLARATION shall amend and completely replace the 2003 Declaration and any other declarations and any amendments thereto, recorded prior to the date of this DECLARATION (“Prior Declarations”).
- M. This DECLARATION is adopted to update the Prior Declarations; to eliminate ambiguity; to further define the rights of the Association and the Unit Owners; to further the Association’s efforts to safely, efficiently, and economically provide a quality living environment; and to preserve and enhance the desirability of living in the Condominium Project and to increase and preserve the attractiveness, quality, and value of the land and improvements thereupon.
- N. The Association hereby desires to establish, for its own benefit and for the mutual benefit of all future Owners and Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively, the “Restrictions”), which shall run with and be a burden upon the Property.
- O. The Association intends that the Owners, Occupants, Lenders and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this DECLARATION, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management, and enjoyment thereof.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Association hereby amends and replaces the Prior Declarations for the Condominium Project and states and declares as follows:

ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meaning stated:

- 1.1 **“Act”** shall mean the Utah Condominium Ownership Act, codified beginning at Section 57-8-1, Utah Code Annotated, as the same may be amended from time to time.
- 1.2 **“Allocated Interest”** shall mean the undivided interest of ownership (expressed as a percentage in this DECLARATION) in the Common Area, the allocation for Common Expense liability, and the allocation of votes in the Association for each Unit. See Exhibit B.
- 1.3 **“Articles”** shall mean the Articles of Incorporation for Capstone Condominium Association.
- 1.4 **“Assessments”** shall mean any charge imposed or levied by the Association against Units including but not limited to annual assessments, special assessments, individual assessments, and all corresponding late fees, fines, and interest as provided in this Declaration.
- 1.5 **“Association”** shall refer to Capstone Condominium Association, a Utah Nonprofit Corporation the membership of which shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association is incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this DECLARATION shall refer to that entity.
- 1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association.
- 1.7 **“Board of Directors” or “Board”** shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. It shall have the same meaning as “Management Committee” does under the Act.
- 1.8 **“Bylaws”** shall mean the Bylaws hereafter adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.
- 1.9 **“Common Area”** shall, unless otherwise provided in this DECLARATION or any Supplemental Declaration, mean all of the following, except any part of a Unit:
 - a) the land and everything included within the Condominium Project, as identified on the Plat;

- b) as applicable, the foundations, roof supporting structures, main walls, and roofs of the buildings in the Condominium Project;
 - c) outdoor grounds, landscaping, street lighting, perimeter fences, exterior surfaces of patio fences, sidewalks, parking spaces, and roadways;
 - d) as applicable, installations of central services (not servicing just one Unit) such as power, light, gas, water, and sewer including all pipes, wires, conduits or other utility lines running through each building and utilized by more than one Unit;
 - e) as applicable, all apparatus and installations existing for common use;
 - f) all other installations and facilities included within Capstone for common use such as the swimming pool, tennis court, and outdoor lighting;
 - g) all other parts of the Condominium Project specifically not included within the individual Units; and
 - h) all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.10 **“Common Expenses”** shall mean (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association; (e) expenses declared common expenses by the DECLARATION; and (f) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act or Project Documents.
- 1.11 **“Condominium Project”** as hereinbefore defined shall include this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Area of the Property are owned separately.
- 1.12 **“DECLARATION”** as hereinbefore defined shall include this Amended and Restated Declaration, including all attached exhibits, which are incorporated by reference, and any and all amendments and supplements to this DECLARATION.
- 1.13 **“Eligible Mortgagee”** shall mean and refer to a first mortgagee which has requested notice of certain matters from the Association in accordance with this DECLARATION.
- 1.14 **“Insurance Trustee”** shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.
- 1.15 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

- 1.16 **“Limited Common Area”** shall mean a portion of the Common Area reserved for the exclusive use of certain Units, as specified herein or on the Plat. The use and occupancy of the Limited Common Area shall be reserved to the applicable Units as identified herein or on the Plat, and each applicable Unit Owner is hereby granted an irrevocable license to use and occupy the same so long as such Owner owns the Unit associated with such Limited Common Area. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.17 **“Manager”** shall mean a person, persons, or entity, if any, selected by the Board of Directors to manage the affairs of the Condominium Project.
- 1.18 **“Occupant”** shall mean any Person, other than an Owner, living, dwelling, or staying in a Unit. This includes, but is not limited to all lessees, tenants, and the family members, guests, agents, and representatives visiting, living, dwelling, or staying in a Unit.
- 1.19 **“Owner” or “Unit Owner”** shall mean the Person(s) vested with record title of a Unit and an undivided interest in the Common Area as shown in the records of the Salt Lake County Recorder. An Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation, unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer otherwise agree, in which event they shall inform the Board in writing of the alternative arrangement.
- 1.20 **“Parcel”** as hereinbefore defined shall include the real property legally described in Exhibit “A.”
- 1.21 **“Person”** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.22 **“Plat”** shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the Salt Lake County Recorder and all amendments thereto, including without limitation, the Record of Survey Map of Capstone (Phase No. 1), a Utah Condominium Project recorded on November 5, 1970 as Entry Number 2357253, and the Record of Survey Map of Capstone (Phase No. 2), a Utah Condominium Project recorded on February 24, 1972 as Entry Number 2438958, and the Phases 3 and 4 Record of Survey Maps of Capstone.
- 1.23 **“Property”** as hereinbefore defined shall include the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.
- 1.24 **“Project Documents”** shall mean and refer collectively to this DECLARATION, the Articles, the Bylaws, and the Rules.
- 1.25 **“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this DECLARATION.

- 1.26 **“Rules”** shall mean and refer to the rules, resolutions, policies, and/or regulations adopted by the Board of Directors.
- 1.27 **“Supplemental Declaration”** shall mean a written instrument recorded in the records of the Salt Lake County Recorder, which refers to this DECLARATION and which amends, modifies, or supplements this DECLARATION in accordance with its terms.
- 1.28 **“Unit”** shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. Mechanical equipment, ducts, pipes, and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. A Unit includes all decorated interiors, wallboard and drywall, surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of *inter alia* and as appropriate, wallpaper, paint, flooring, carpeting, and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. Unit shall include the garage, patio(s), and/or balcony. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.
- 1.29 **“Unit Number”** shall mean the number, symbol or address that identifies one of the several Units in the Condominium Project.

ARTICLE 2 THE CONDOMINIUM PROJECT

- 2.1 **Submission.** The Association hereby confirms that the Property is a Condominium Project as defined hereinbefore all pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this DECLARATION; and the Association hereby declares and agrees that the Condominium Project and all of the Units thereof shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.
- 2.2 **Name and Location.** The Condominium Project shall be named and known as CAPSTONE CONDOMINIUMS. The Condominium Project is located in Salt Lake City, Salt Lake County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel set forth on Exhibit A. The name of the Association is the CAPSTONE CONDOMINIUM ASSOCIATION.

- 2.3 **Interpretation of Declaration and Applicability of the Act.** The Association intends that the Condominium Project shall be governed by the Act, except where the Association has included specific provisions in this DECLARATION that legally vary, supersede, or supplement the Act, in which event such specific provisions of this DECLARATION that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act.
- 2.4 **Agent for Service of Process.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, unless such time as the Board of Directors duly appoints a new agent. The Board of Directors may execute and record a Supplemental Declaration solely for the purpose of changing the Agent for Service of Process at any time and without satisfying any procedure otherwise required for a Supplemental Declaration.

ARTICLE 3

DESCRIPTION OF LAND AND IMPROVEMENTS AND ALLOCATED INTEREST

- 3.1 **Description of the Land.** The land is located in Salt Lake City, Salt Lake County, Utah and is more particularly described on Exhibit A.
- 3.2 **Description of Improvements.** Capstone consists of twenty-four (24) buildings each comprising two (2) Units for a total of forty-eight (48) Units, along with forty-eight (48) fully enclosed two-car garages. The buildings are of wooden frame with load and non-load bearing walls studded with wood; asphalt shingles, interior walls, and exterior walls surfaced with brick veneer and cedar siding. Other improvements include, asphalt roadways, parking spaces, concrete sidewalks, fences, a swimming pool, tennis court, clubhouse, outdoor lighting, and landscaping.
- 3.3 **Description and Legal Status of Units.** The Plat shows the Unit Number of each Unit, its location, and the Common Areas and Limited Common Areas to which it has access. Each such Unit consists of a Unit and an appurtenant undivided interest in and to the Common Area. All Units shall be capable of being independently owned, encumbered, and conveyed. Each Unit shall include that part of the building which lies within the boundaries of the Unit, which boundary shall be determined in the following manner:
- a) **Description of and Boundaries of each Unit.** Subject to the following descriptions of particular items, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. The cubic content space and Unit Number of each of the Units within the Condominium Project are set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective levels of the Units as shown on the

Plat. All framing in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing in any bearing walls are part of the Common Area. All other materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all plywood decking, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Area. Generally, all paneling, tiles, wallpaper, paint, carpet, flooring, and other materials constituting any part of the finished surfaces or installed within the finished surfaces in a Unit are part of the Unit. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit. For all pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is part of the Unit and any portion serving more than one Unit or any portion of the Common Area is part of the Common Area. All windows and doors in or on the boundary of any Unit and any part related thereto are part of the Unit.

- b) **Variances between Plat and as-built construction.** If the original as-built construction of the Project varies from any horizontal or vertical measurement on the Plat, the original construction, to the extent ascertainable, shall be the controlling dimension in any Unit. The original construction shall be the first installation of framing and wallboard. If the Board of Directors determines (in its sole discretion) that the current construction varies from the Plat and that the location of the original as-built construction is uncertain (i.e., the Board of Directors decides that it cannot determine with a reasonable degree of certainty that the current construction is the original as-built construction), the Board of Directors, in its discretion, may, at the expense of the Association or the Owner, require that the current construction be made to comply with the Plat.

- 3.4 **Description of Limited Common Area.** Limited Common Area shall include those items designated as such on the Plat and in this DECLARATION. The Plat contains a description of the Limited Common Area of the Project and designations of the particular Unit or Units to which use of such Limited Common Area is reserved. Limited Common Area includes the Owner storage areas, Unit backyard yards, and the decks and cement patios and fences surrounding patio and backyard areas that are immediately adjacent and contiguous to certain Units. Limited Common Area also includes each of the two (2) car garages. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area, and shall have the responsibility to maintain, repair, and replace such Limited Common Area subject to any architectural or design guidelines created by the Board of Directors. The Association repaired and installed new fencing throughout the Condominium Project in 2013 and such fence line boundaries may vary from the Plat. Such variances, which may include extensions into Common Area, are hereby accepted moving forward. Any additional fence line extensions and/or changes made since 2013 shall be prohibited unless approved in advance by the Board of Directors, who is under no obligation to grant such request. The Limited Common Area

shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

- 3.5 **Allocated Interest of Each Unit in the Votes of the Association.** The designation of the Allocated Interest that each Unit has in the votes for all matters related to the Association is provided for on Exhibit B.
- 3.6 **Allocated Interest of Each Unit in the Common Expenses of the Condominium Project.** The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium Project is provided for in Exhibit B.
- 3.7 **Plat.** 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 required by the Act are deemed included in this DECLARATION. If any conflict exists between the Plat and this DECLARATION, the DECLARATION shall control.

ARTICLE 4 MAINTENANCE AND UTILITIES

- 4.1 **Maintenance of Units.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this DECLARATION or identified on the Plat to be part of a Unit. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition all of the following:
- a) all interior and exterior doors, including garage doors;
 - b) all paneling, tiles, wallpaper, paint, carpet, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;
 - c) all windows and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass);
 - d) all skylights;
 - e) all sewer and drainage pipes, water, power, and other utility lines that serve only that Unit until the points where the same join the utility lines serving other Units;
 - f) any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures, fans, plumbing fixtures, stoves, dishwashers, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install.

4.2 Modifications to Units.

- a) An Owner may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units, but an Owner shall not make any structural alterations or alterations to any part of the Unit on the exterior of a building (such as windows, light fixtures, skylights, and exterior doors and garage doors), the Common Area, or the Limited Common Area without the prior written approval of the Board of Directors. The Board of Directors may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular color schemes, material requirements, or other standards.
- b) **Remodeling and Extensive Maintenance.** An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area, or Limited Common Area. Without prior written permission of the Board of Directors, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

4.3 Maintenance of Common Area and Limited Common Area

- a) **Maintenance of Common Area.** Except as otherwise provided specifically herein, the Association, through the Board of Directors or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this DECLARATION and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall also remove the snow, in a reasonable amount of time, from any sidewalks running throughout the Condominium Project and any Common Area parking areas, and other areas if designated by the Board. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- b) **Maintenance of Limited Common Area.** Except as limited below, the Owners shall repair, maintain, and replace any Limited Common Areas described in Section 3.2 above, subject to any guidelines required by the Board of Directors. The Owner shall also be responsible for making sure Limited Common Area that is within an Owner's exclusive control is maintained in a clean, sanitary, and uncluttered condition. Exterior portions of decks that are original to the initial construction of the Condominium Project shall be repaired and maintained by the Association. Interior portions of such decks shall be repaired and maintained by

its Owner. Decks that have been altered by Owners since the initial construction shall be repaired, replaced, and maintained in their entirety by the Owner of such Unit.

- c) **Standard of Maintenance.** The Board of Directors shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area so long as the Association is maintained in the best interests of the Owners.
- d) **Assessment of Maintenance Expenses to Specific Owner.** If the need for maintenance, repair, or replacement is caused through the willful or negligent act of an Owner or an Occupant the Board of Directors may cause the maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

4.4 **Flood Control and Maintenance.** The Association, acting through the Board of Directors, shall provide for such maintenance to the storm drainage systems and irrigation systems within the Condominium Project boundaries as may be necessary to keep them clean, functional, and generally in good condition and repair.

4.5 **Default in Maintenance.** If an Owner or Occupant fails to maintain a Unit and/or Limited Common Area as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board of Directors to preserve and protect the attractive appearance and value of the Condominium Project, following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board of Directors deem necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment, as outlined in Article 6. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in Article 6 of this DECLARATION.

4.6 **Utilities.** All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

ARTICLE 5 MANAGEMENT

5.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this

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

- 5.2 **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all restrictions, covenants, and conditions contained in this DECLARATION.
- 5.3 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit and payment of any reinvestment fee that may be required by the Board of Directors, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.4 **Voting.** Except as otherwise disallowed in this DECLARATION or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit.
- 5.5 **Board of Directors.** The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. Except as otherwise provided in this DECLARATION or the Bylaws, the Board of Directors may act in all instances on behalf of the Association. The Board of Directors may, as it deems appropriate, recommend amendments to the Bylaws and this DECLARATION and adopt, amend, and repeal the Rules.
- 5.6 **Qualification of Board Members.** All members of the Board of Directors must physically occupy their Units in the Project as their primary residence. Each Board Member shall be an Owner or the spouse of an Owner, but no two (2) Board Members may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). If an Owner is a corporation, partnership, limited liability company, a manager, or trust, such entity may designate a representative to serve on the Board of Directors who may be an officer, partner, member, manager, trustee, or beneficiary of such Owner so long as the designated person resides in the Project. To be eligible for election or appointment to the Board of Directors, an Owner shall not have been delinquent in the payment of Assessments at any time during the preceding twelve (12) months and shall remain current on all

Assessments while serving as a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board of Directors shall automatically terminate.

- 5.7 **Action by Board of Directors and Owners.** Except as specifically provided herein, the Board of Directors and any individual Owner have no authority to and may not act on behalf of the Association to amend or terminate this DECLARATION, to elect or remove members of the Board of Directors (except as provided in the Bylaws for filling vacancies in its membership for the unexpired portion of any term for which a Board Member has resigned or been removed), or to establish or change the qualifications, powers, and duties, or terms of the Board of Directors. Unless otherwise provided in this DECLARATION or the Bylaws, the Board may act on behalf of the Association in all instances unless such action requires approval from the Owners.
- 5.8 **Annual Meeting.** The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.9 **Right of Association to Enter Units.** The Association acting through the Board of Directors, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least ten (10) days, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess and appraise, to abate any infractions, to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner as an Individual Assessment provided in Article 6, such assessment to be secured by a lien provided in Section 6.1. Owners may require to be present, or have a representative present during any Unit entry, except for emergency situations.
- 5.10 **Rules.** The Board of Directors may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Condominium Project. The Rules may address any issues including those addressed in this DECLARATION and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this DECLARATION and the Bylaws so long as they do not contradict the same. The Board of Directors determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive.
- 5.11 **Remedies Available to the Board of Directors.** In addition to any other remedies allowed or provided in this DECLARATION for any violation of the DECLARATION, Bylaws, or Rules, the Board of Directors may adopt any one or more of the following: (1) impose and levy fines for violation of the Project Documents; (2) terminate an Owner's rights to receive utility services paid as a common expense; (3) terminate an Owner's rights to access and use the Common Area recreational facilities; (4) terminate an Owner's voting rights as further provided herein; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.12 **Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance, repair, and replacement of the Common Area, as determined by the Board of Directors. Reserve funds may be collected as part of the regular Assessments. To the

extent the Board of Directors deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments. Reserve funds shall not be commingled with general operating funds.

- 5.13 **Availability of Project Documents.** The Association shall maintain current copies of the Project Documents and the Association's own books, records, and financial statements (as required by law) available for inspection, upon written request by any Owner or Lender (or any insurer or guarantor of a Lender) as may be further provided in the Bylaws. The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Board Member or Manager and at a location convenient to the Board of Directors within the Condominium Project or at such other location as may be agreed by the Board of Directors and the party requesting. Nothing in this paragraph shall require the Board of Directors to allow inspection of any portion of the records that will reveal personal and private information of a resident.
- 5.14 **Managing Agent.** The Board of Directors may contract with a professional Manager to assist the Board of Directors in the management and operation of the Condominium Project and may delegate such of its powers and duties to the Manager as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets and make Assessments. Any powers and duties delegated to any Manager may be revoked by the Board of Directors at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon sixty (60) days' notice and have a term not to exceed two (2) years, which may be renewed by the Board of Directors.
- 5.15 **Hearing before Board of Directors.** The Board shall create a reasonable hearing process applicable in case the Board or Association take adverse action related to any particular Owner or group of Owners. The Board of Directors shall not be under any obligation to offer a hearing process, except as required by law or by this DECLARATION, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. Nothing in this paragraph shall preclude the Board of Directors and an Owner or group of Owners from agreeing to mediate and/or arbitrate any dispute in connection with any adverse action or proposed action.

ARTICLE 6 BUDGETS, EXPENSES, AND ASSESSMENTS

- 6.1 **Annual Budget.** The Board shall prepare, or cause the preparation of, an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The proposed budget shall be presented to the Owners at the annual meeting and shall be approved if so consented by a majority of the Owners present in person or by proxy at the meeting. If the Association fails to adopt an annual budget, the last adopted budget shall continue in effect until a new budget is adopted.

- 6.2 **Creation of Lien and Personal Obligation for Assessment.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this DECLARATION. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.
- a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys' fees, if any, against the latter for his share of any Assessments authorized by this DECLARATION up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Manager setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the personal obligation for any delinquent Assessment, together with interests, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.
 - b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.
- 6.3 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of the following: promoting the safety and welfare of the Owners; effecting the management, maintenance, care, preservation and protection of the Condominium Project; enhancing the quality of life in the Condominium Project; and maintaining and enhancing the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.
- 6.4 **Annual Assessment.** Annual Assessments shall be made on a calendar year basis based on the annual budget. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the the beginning of each fiscal year. Each Annual Assessment shall be due and payable in monthly or

quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

- 6.5 **Special Assessments.** If so approved by a majority of Owners present in person or by proxy at a meeting called for such purpose, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of Common Area; or for any other expense incurred or to be incurred as provided in the Declaration. Notice in writing of the amount of any Special Assessment and the time for their payment shall be given as soon as is reasonably possible to Owners. Payments shall be due on the dates and in the manner provided in the notice as determined by the Board.
- 6.6 **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Association in enforcing the Project Documents against that Unit and Owner; (b) costs associated with the maintenance, repair, or replacement of Common Area caused by the neglect or actions of an Owner or the Owner's Occupants; any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board, including without limitation, action taken to bring a Unit and its Owner into compliance with the Project Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees, court or collection costs, interest, fines, and other charges relating thereto as provided in this Declaration.
- 6.7 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (except Individual Assessments discussed above) shall be uniformly and equally imposed upon all Units according to its Allocated Interest.
- 6.8 **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this DECLARATION and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of liability for any Assessment or charge under this DECLARATION, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Unit if the Owner is not a resident of the Unit of the Owner.
- 6.9 **Certificate of Payment.** The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written

statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of \$50 (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Board of Directors for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

- 6.10 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Condominium Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment at the discretion of the Board of Directors.
- 6.11 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.12 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this DECLARATION.

ARTICLE 7

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

- 7.1 **Due Date and Delinquency.** Each Owner must pay Assessments in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than fifteen (15) days from the date that they first became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more or all of the sanctions granted in this Article 7 or elsewhere herein or in the Act.
- 7.2 **Collection Charge.** If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of eighteen percent (18%) per annum, in addition to a collection charge, and/or such other late fee penalty as the Board of Directors may establish in the Rules of the Association. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article 6 of this DECLARATION. Late fees and interest may be charged and accrue each month until the delinquent Assessment is paid in full.
- 7.3 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the

Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

- 7.4 **Foreclosure Sale.** Any foreclosure provided for in this DECLARATION may be conducted pursuant to a judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including a reasonable attorney's fee incurred by the Association. The Association may, through its duly authorized agents including the Board of Directors, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.
- 7.5 **Trust Deed Provisions.** Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under this DECLARATION and the Bylaws of this Association and the Rules of this Association as may be adopted by the Board of Directors of the Association. The Owner hereby requests that any and all notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit and the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.
- 7.6 **Suspension of Votes.** The Board of Directors may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the DECLARATION remains delinquent. An Owner present in person or by proxy at an Association meeting whose voting rights have been suspended shall count for purposes of establishing a quorum.
- 7.7 **Termination of Services.** If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may terminate the Owner's right to receive utility services paid as a Common Expense, and access to and use of the Common Area. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Area, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.
- 7.8 **Unpaid Assessments and Future Lease Proceeds.** If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment is due, the

Board of Directors may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

ARTICLE 8 PROPERTY RIGHTS IN COMMON AREA

8.1 General Easements to Common Area and Units.

- a) Subject to this DECLARATION and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, contract purchaser, Occupant, or other Person who resides in such Owner's Unit.
- b) The Association, acting through the Board of Directors or an authorized agent of the Board of Directors, shall have nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Board of Directors or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

- 8.2 **Public Utilities.** Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes

and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

8.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

8.4 **Limitation on Easement - Suspension of Owner's Rights.** An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this DECLARATION, any Bylaw of the Association and/or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and
- c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

8.5 **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit ____ of CAPSTONE CONDOMINIUMS, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded _____, _____ as Entry Number _____, in Book _____, at

Page _____ of the official records of the Salt Lake County Recorder, State of Utah, and as identified and described in the AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE CAPSTONE CONDOMINIUMS, a Utah Condominium Project, recorded _____, _____, _____ as Entry Number _____, in Book _____, at Page _____, of the official records of the Salt Lake County Recorder, State of Utah. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said DECLARATION. This conveyance is subject to the provisions of said DECLARATION, including any amendments thereto. The undivided interest in the Common Area conveyed hereby is subject to modification, from time to time, as provided in the DECLARATION for expansion of the Condominium Project. Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this DECLARATION shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

- 8.6 **Views.** Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Condominium Project relative to any other Unit or structure only within the Condominium Project.

ARTICLE 9 USE RESTRICTIONS

- 9.1 **Rules and Regulations.** The Association, through the Board, has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Condominium Project is maintained and used in a manner consistent with the Project Documents. Owners and Occupants shall at all time obey the Rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such Rules shall apply and be binding upon all Owners and Occupants of the Units. The Rules may address any issues including those addressed in this Declaration. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration so long as they do not contradict the same.
- 9.2 **Occupancy Use.** Units shall be occupied and used only as a private residence. Common Areas are to be used in a manner consistent with their community nature and use restriction.
- 9.3 **Signs.** Lawn signs are prohibited. All other signs may only be erected or maintained on the Property, whether in a window or otherwise, with the prior approval of the Board of Directors.

- 9.4 **Nuisance.** No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body.
- 9.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Board of Directors.
- 9.6 **Parking.** Each Unit is assigned a 2-car garage. Owners and tenants must use their garages for parking vehicles. Other parking areas are for visitors unless designated or approved otherwise by the Board. Vehicles shall not be parked at an entrance to or in front of a garage or walkway or at any other location within the Condominium Project, which would impair vehicular or pedestrian access, or snow removal. The Association may charge a fee for use of the parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. Undesignated parking stalls shall be subject to and governed by Association Rules, and shall be assigned by the Board of Directors on the basis of need and a charge may be imposed by the Board for such use. The Board may adopt Rules relating to the size and dimensions of the vehicles parked within the Condominium Project; relating to the admission and temporary parking of vehicles within the Condominium Project; and the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board, the right to remove or cause to be removed any vehicles that are improperly parked, the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.
- 9.7 **External Fixtures.** No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Board of Directors, and any replacements thereof, shall be constructed, erected or maintained on the Condominium Project without the prior written approval of the Board of Directors. The Board of Directors may adopt Rules regulating the location, type, color, and design of these external fixtures.
- 9.8 **Window Covers.** No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board of Directors may adopt Rules regulating the type, color, and design of the external surface of window covers.
- 9.9 **External Laundering.** Unless otherwise permitted by the Board of Directors, external laundering and drying of clothing and other items is prohibited.

- 9.10 **Repairs.** No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project, except for emergency repairs and other repairs made within the Limited Common Area garage.
- 9.11 **Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Directors.
- 9.12 **Pets.** No pets, animals, livestock, or poultry of any kind shall be bred in, on or about the Condominium Project. Up to three (3) domestic household pets per Unit are allowed. The Board of Directors may adopt Rules adding further restrictions related to pets not inconsistent with this DECLARATION including but not limited to the type of pets allowed and the requirements for registration and the use of leashed and noise barking limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area and shall be leashed whenever outside the Unit.
- 9.13 **Leases.** Notwithstanding anything to the contrary contained in this DECLARATION, the leasing or renting of any Unit within the Project shall be governed by this Section.
- a) **Owner Occupancy Requirement and Rental Restriction.** An Owner may rent his Unit subject to the limitations and requirements of this Section 9.13. For purposes of this Section only, the term “rent” in any grammatical form includes lease, sublet, or otherwise permit or allow others to reside therein for legal consideration payable to the Owner or to others at the Owner’s request or direction, or allow others to reside therein for charitable purposes.
- b) **Restrictions on Rentals and Leases.**
- 1) No Unit may be rented if the rental results in more than six (6) of the Units (“Rental Limit”) being rented at the same time. If six (6) Units are rented, Owners desiring to rent a Unit will be placed on a waiting list in chronological sequence of a written request.

- 2) No Unit may be rented for an initial period of less than twelve (12) consecutive months; this twelve (12) month minimum occupancy period applies also when individual rooms are being rented.
- 3) A Unit may not be rented except by written agreement and only with the express written consent of the Board.

c) Owner Occupancy and Rental Restriction Exceptions.

- 1) Immediate Family Exception. Occupancy by the immediate family members of an Owner shall be deemed as occupancy by the Owner. As used in this Section 9.13, “immediate family members” means an Owner’s spouse/significant other, child, parent, grandchild, grandparent, and sibling.
- 2) Grandfather Exception. As of the date of recording this amendment, any Owner currently renting a Unit (“Grandfathered Owner”) may continue to rent that Unit until such time as the Grandfathered Owner no longer has an interest in the Unit, or at such time as the Grandfathered Owner occupies the Unit. Thereafter, the Rental Limit shall apply. Section 9.13(b)(2) and (3) apply to grandfathered Units.
- 3) Military Deployment Exception. The Owner of a Unit, or the spouse of the Owner, who is deployed with the military.
- 4) Employment Relocation Exception. The Owner of a Unit, or the spouse of the Owner, who is relocated for employment purposes for no less than two (2) years.
- 5) Trust or Entity for Estate Planning Exception. If the Owner of a Unit is a trust, partnership, corporation, or other entity, the Unit shall be occupied by a principal, owner, trustee, member, and/or manager of the entity or his/her immediate family members.
- 6) Hardship Exception. Notwithstanding any of the above, an Owner may apply to the Board of Directors for a hardship waiver of any or all of the conditions of this Section 9.13 upon a showing of hardship or practical difficulties arising from unforeseen events such as the death of a husband or wife or life partner of the Owner, job relocation at least fifty (50) miles from the Property, charitable service, public service, disability, or difficulty in selling the Unit due to market conditions in the area or other similar circumstances. The Board of Directors has discretion to approve an Owner’s hardship application to temporarily “rent” the Owner’s Unit. However, the Board of Directors may not approve a hardship application to “rent” a Unit under this Section for a time period of more than two (2) years or if the result of granting the hardship application would put the

Association's non-Owner occupied Units at greater than 25% of the total Units.

- d) **Multiple Unit Ownership.** An Owner of multiple Units is not eligible to rent more than one (1) Unit.
- e) **Owner in Residence/Tenants.** Units shall not be considered a rental if the Owner resides in the Unit along with his/her tenants. In a Unit wherein the Owner resides, the Owner may have up to two (2) tenants, regardless of their age. Such tenants must comply with the requirements of (b)(2) and (b)(3).
- f) **Tenant Occupancy Limits.** An Owner shall not rent his/her Unit to more than three (3) unrelated individuals.
- g) **Application and Approval.** Prior to renting any Unit or individual room, an Owner shall apply to the Board of Directors for approval and, upon request of the Board, include a copy of the proposed lease agreement. The Board of Directors shall review the application and make a determination as to whether the rental will exceed the Rental Limit or violate any of the restrictions described in this Section 9.13. The Board of Directors shall:
 - 1) Approve the application if it determines that the rental of the Unit will not violate any of the applicable restrictions of this Section 9.13, and is consistent with all the requirements of this DECLARATION, the Bylaws then in force, and any Rules adopted by the Board of Directors.
 - 2) Deny the application if it determines that the rental of the Unit will exceed the Rental Limit, or that other restrictions within this Section 9.13 are violated or not consistent with any of the requirements of this DECLARATION, the Bylaws then in force, and any Rules adopted by the Board of Directors.
- h) **Rules regarding the Application and Approval to Rent a Unit.** The Board of Directors may adopt Rules that establish the application and approval process, the content or form of lease agreements, and any other Rules deemed necessary by the Board of Directors to implement this Section 9.13.
- i) **Remedies.**
 - 1) If an Owner rents a Unit in violation of or without complying with the requirements of this Section 9.13 or in violation of the Rules imposed by the Board of Directors under this Section, including renting a Unit after the Board of Directors denies such application, the Board of Directors may:
 - i) Assess fines against the Owner in an amount to be determined by the Board of Directors pursuant to a schedule of fines adopted by the Board in accordance with the Act; or

- ii) Regardless of whether any fines have been imposed, proceed with any other available legal remedy, including, without limitation, an action to require the Owner to terminate the rental agreement and remove the tenant.
 - 2) Pursuant to Rules adopted under this Section, if the Board of Directors determines that a tenant has violated a provision of the Project Documents, after notice and an opportunity for a hearing as provided by the Act, the Board of Directors may require an Owner to terminate a rental agreement and remove the tenant(s).
- j) **Costs and Attorney Fees.**
- 1) Fines, charges, and expenses incurred in enforcing the Project Documents with respect to the tenant, and for any costs incurred by the Association in connection with any action involving Section 9.13, including reasonable attorney fees, shall be an Individual Assessments against the Owner and Unit which may be collected and foreclosed by the Association as provided herein.
 - 2) In addition to Subsection (1) of this Section (j), the Association is entitled to recover from an Owner determined in violation of this Section 9.13 its costs and attorneys' fees incurred for enforcement, regardless of whether any lawsuit or other action is commenced. The Association may assess the costs and attorney fees against the Owner and the Unit as an Individual Assessment as provided in this DECLARATION and pursuant to the Act.
- k) **Utah Landlord-Tenant Code Not Applicable.** Nothing in this Section 9.13 may be construed to impose on the Association the duties, responsibilities, or liabilities of a landlord under Utah law.
- 9.14 **Landscape Maintenance.** The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area. The Association shall have the right of access to all Common Area of the Condominium Project as necessary for such landscape maintenance.
- 9.15 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board of Directors. This includes, but is not limited to, the use of waterbeds, or Jacuzzi hot tubs.
- 9.16 **Commercial Use Prohibition.** No business use or trade may be conducted in or from any Unit unless:
- a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;

- b) the business activity conforms to all zoning requirements for the Condominium Project;
- c) the business activity does not involve persons coming onto the Condominium Project who do not reside in the Condominium Project or door-to-door solicitation of residents of the Condominium Project;
- d) such business is legal within the meaning of all applicable statutes of the state of Utah and all ordinances of municipal authorities; and
- e) the business activity is consistent with the residential character of the Condominium Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Board of Directors.
- f) Notwithstanding the above, the leasing of a Unit under Section 9.13 shall not be considered a trade or business within the meaning of this Section.

9.17 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board of Directors has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board of Directors review shall be for the purpose of assuring, in the sole and absolute discretion of the Board of Directors, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of Directors of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this DECLARATION. The provisions of this DECLARATION shall be and remain superior to any such plat or covenants, conditions or restrictions except to the extent they defer to the Plat.

9.18 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board of Directors or any committee established by the Board of Directors for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, windows, doors, evaporative coolers, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work that in any way alters the exterior appearance of the Property. The Board of Directors, or committee established by the Board of Directors for that purpose, may designate the design, color, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior

structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board of Directors, or any committee established by the Board of the Directors for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

9.19 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board of Directors.

9.20 **Variances.** The Board of Directors may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Board of Directors determines in its discretion: (a) either: (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this DECLARATION has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents of the Condominium Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Directors. The Board of Directors shall not have any right or authority to deviate from this DECLARATION except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this DECLARATION by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this Section.

9.21 **Hazardous Substances.**

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

b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the Hazardous

Substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner under this Section 9.21 shall survive any subsequent sale by an indemnifying Owner.

- c) As used in this Section 9.21, “Hazardous Substances” are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 9.21 “Environmental Law” means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

9.22 **Smoke and Carbon Monoxide Detectors.** Each Unit shall have an operable Carbon Monoxide Detector and Smoke Detectors as required by building code. The Board of Directors may, but is not required to, upon advanced notice of at least seven days (7), enter a Unit to ensure that the Unit is in compliance with this Section.

9.23 **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing, unless the Unit is properly winterized. No Owner may install any form of water or steam heating in any Unit without prior written consent of the Board of Directors and shall, if authorized, maintain a suitable insurance policy satisfactory to the Board of Directors that indemnifies all other Owners for any damage incurred by virtue of such water or steam.

9.24 **Tobacco Smoking.** The Utah Legislature has determined that there is no acceptable level of exposure to tobacco smoke. See U.C.A. §78B-6-1105. As a result, smoking in the Common Area is prohibited for the health and safety of all residents.

ARTICLE 10 INSURANCE

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

10.1 **Property Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this DECLARATION. Different policies may be obtained from different insurance carriers

and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsement to other policies. Insurance premiums shall be a Common Expense.

10.2 Property Insurance. The Association shall obtain property insurance as required by the Act at U.C.A. 57-8-43.

- a) Hazard Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
 - i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
 - ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
 - iii) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
 - iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
 - v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) “Inflation Guard Endorsement,” if available, (ii) “Building Ordinance or Law Endorsement,” (the

endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

- b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
 - i) the Association's policy provides primary insurance coverage;
 - ii) notwithstanding Subsection (i) above, and subject to Subsection (iii) below:
 - (a) the Owner is responsible for the Association's policy deductible; and
 - (b) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
 - iii) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and
 - iv) If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.
- c) Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project, or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property.

If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

- d) Earthquake Insurance. The Association may purchase earthquake insurance as the Board deems appropriate. If the Board elects not to purchase earthquake insurance, a vote of a majority of the Owners present at the annual meeting, with a proper quorum, may veto this decision. If the Owners at the annual meeting veto the decision to not purchase earthquake insurance, the Board shall purchase earthquake insurance within (60) days of the vote.
- e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- f) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.
- g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

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

10.4 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

- 10.5 **Fidelity Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (c) officers, directors, and employees of any manager of the Association, and (d) coverage for acts.
- 10.6 **Directors and Officers Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.
- 10.7 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.
- 10.8 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 10.9 **Association has the Right to Negotiate All Claims and Loses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney

is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

- 10.10 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the Ownership Interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 10.11 **Owner Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 10.12 **Waiver of Subrogation Against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.
- 10.13 **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, the Board may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.
- 10.14 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8-43 that became law in 2011, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

- 11.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Board of Directors shall promptly take the following actions:

- a) The Board of Directors shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
- b) The Board of Directors shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
- c) Pursuant to Section 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
- d) If the Board of Directors determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board of Directors shall cause notice to be sent to all Owners and to all Lenders' encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Board of Directors shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board of Directors shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- e) If the Board of Directors in good faith determines that none of the bids submitted under this Section 11.1 reasonably reflect the anticipated reconstruction costs, the Board of Directors shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board of Directors as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board of Directors shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.
- f) If the Board of Directors determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board of Directors may abate Assessments against the Owner thereof until the Board of Directors determines that habitability has been restored.

- 11.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board of Directors shall call a special meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- 11.3 **Procedure for Minor Reconstruction.** If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Board of Directors shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Board of Directors determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 11.4 **Procedure for Major Reconstruction.** If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Board of Directors, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board of Directors. Disbursement of such funds shall be made only upon the signatures of two members of the Board of Directors and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board of Directors shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Board of Directors determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and

execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board of Directors shall furnish to the Board of Directors before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances, and deemed suitable by the Board of Directors. The Board of Directors may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

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

ARTICLE 12 EMINENT DOMAIN

- 12.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof,

leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

- 12.2 **Partial Taking of a Unit.** Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 12.3 **Taking of Limited Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 12.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.
- 12.5 **Taking of Entire Condominium Project.** In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 12.6 **Priority and Power of Attorney.** Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and

benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13 RIGHTS OF LENDERS

- 13.1 **Notice of Lenders.** A Lender shall not be entitled to receive any notice that this DECLARATION requires the Association to provide Lenders for notice, approval, or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this DECLARATION is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, a Lender's rights pursuant to this DECLARATION, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section 13.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.
- 13.2 **Priority of Lenders.** No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 13.3 **Relationship with Assessment Liens.**
- a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.
 - b) If any Unit that is subject to a monetary lien created by this DECLARATION is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this DECLARATION shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this DECLARATION for any Assessments that became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
 - c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of

foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.

- d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this DECLARATION during the period such Person is an Owner.

13.4 **Required Lender Approval.** Except upon the prior written approval of a majority of all Lenders that have provided notice to the Association as described in Sections 13.1 and 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Board of Directors shall be entitled by action or inaction to do any of the following:

- a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
- b) Except as specifically provided by this DECLARATION, amend any provisions governing the following:
 - i) redefinition of any Unit boundaries;
 - ii) convertibility of Units into Common Area or vice versa;
 - iii) expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project; or
 - iv) restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this DECLARATION, the Articles, or the Bylaws.

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

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

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

- a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;
- b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- c) Any proposed action by the Owners or the Association that would amount to a material change in the DECLARATION as identified in Section 13.4 of the DECLARATION.

ARTICLE 14 TERMINATION

- 14.1 **Required Vote.** Except as otherwise provided in Articles 11 and 12, the Condominium Project may only be terminated by unanimous agreement of all Owners.
- 14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.
- 14.3 **Sale of Condominium Project.** A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this DECLARATION. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this DECLARATION. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this DECLARATION.

- 14.5 **Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE 15 AMENDMENTS

- 15.1 **General Amendment Requirements.** Amendments to this DECLARATION shall be proposed by either a majority of the Board of Directors or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this DECLARATION may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.
- 15.2 **Lender Approval for Association Amendment or Action.** Assuming a Lender has given notice as provided in Section 13.1 above, if a Lender's consent is a condition for amending this DECLARATION or the Bylaws, or for any other action, such Lender's consent is presumed if:
- a) Written request of the proposed amendment or action is sent by certified or registered mail to the Lender's address listed with the Association;
 - b) Sixty (60) days have passed after the day on which notice was mailed; and
 - c) The Association has not received a written response from the Lender consenting to or refusing to accept the amendment or action.

ARTICLE 16

GENERAL PROVISIONS

- 16.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this DECLARATION, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.
- 16.2 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 16.3 **Cumulative Remedies.** All rights, options and remedies of the Association, the Owners or the Lenders under this DECLARATION are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this DECLARATION.
- 16.4 **Severability.** Invalidity of any one or a portion of the Restrictions or provisions set forth in this DECLARATION or in the Bylaws or the Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.
- 16.5 **Covenants to Run with the Land.** The Restrictions and other provisions of this DECLARATION shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this DECLARATION.
- 16.6 **Construction.** The provisions of this DECLARATION shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this DECLARATION to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this DECLARATION.
- 16.7 **Gender and Number.** Whenever the context of this DECLARATION requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

- 16.8 **Nuisance.** The result of every act or omission whereby any provision or Restriction contained in this DECLARATION or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this DECLARATION and shall not be deemed exclusive.
- 16.9 **Attorneys' Fees.** If the Association obtains legal counsel to enforce any of the provisions contained in this DECLARATION, the Bylaws, or the Rules, the Association may assess all reasonable attorneys' fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is ultimately initiated or not. In the event that litigation is pursued under the terms of the Project Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.
- 16.10 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of this DECLARATION shall be in writing and shall be delivered as follows:
- a) Notice to an Owner shall be delivered personally, by email, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. Notice by email shall be deemed delivered when sent. Notice by email is not proper notice if an Owner sends a written request to the Board of Directors stating that the Owner will not accept notices by email.
 - b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered upon deposit.
 - c) The DECLARATION of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, or to any Lender or Lenders, in any manner that this Section 16.10 allows, shall be deemed conclusive proof of such mailing.
 - d) Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the

Utah Department of Commerce (if any); or if there is none, to the statutory agent of the Association; or if there is none, to the President and Secretary of the Association. The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental DECLARATION and such Supplemental DECLARATION may be filed for this purpose alone upon approval of the Board of Directors.

- 16.11 **Effect of DECLARATION.** This DECLARATION is made for the purposes set forth in the recitals in this DECLARATION and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this DECLARATION, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this DECLARATION, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 16.12 **Nonliability of Officials.** To the fullest extent permitted by law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board Member or officer acted in good faith within the scope of such Person's duties.
- 16.13 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this DECLARATION.
- 16.14 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this DECLARATION. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this DECLARATION).
- 16.15 **Notification of Sale and Reinvestment Fee.** Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable Reinvestment Fee payable pursuant to the Rules, to cover Association documentation and processing. The Reinvestment Fee shall be in an amount equal to one (1) month of the then current Annual Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of

the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The Reinvestment Fee shall be the personal obligation of the new Owner and shall be secured by the lien in Article 6. Notwithstanding the other provisions of this DECLARATION, this Section 16.15 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding.

- 16.16 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.
- 16.17 **Conflicting Provisions.** In the case of any conflict between this DECLARATION and the Bylaws, or the Rules, this DECLARATION shall control. In the case of any conflict between this DECLARATION and the Act, to the extent the Act does not legally allow this DECLARATION to contain provisions contrary to the Act, the Act shall control and this DECLARATION shall be deemed modified accordingly. Notwithstanding the above, this DECLARATION shall be deemed modified only to the extent necessary to come into compliance with the Act.
- 16.18 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this DECLARATION, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this DECLARATION, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this DECLARATION and shall not be affected by the disability of any such Owner or Occupant.
- 16.19 **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not

be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that Association, and the Board of Directors, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 10 above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

CAPSTONE CONDOMINIUM ASSOCIATION

By: Kary L. Powell
Its: President

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

On this 20 day of July, 2016, personally appeared before me Katelyn Velasquez, who being by me duly sworn, did say that he/she is the President of Capstone Condominium Association; that the foregoing Amended and Restated Declaration was approved by at least a majority of the Association's voting interests; and that the foregoing information is true and accurate to the best of his/her knowledge.

Katelyn Velasquez
NOTARY PUBLIC

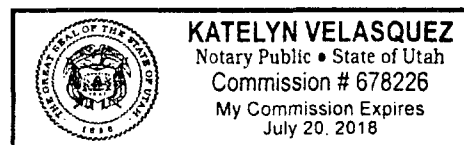


EXHIBIT A

DESCRIPTION OF THE CAPSTONE CONDOMINIUMS

PARCEL NUMBERS

48 Units and 4 Common Areas

Capstone Condominium Land Description

The real property which is referred to in and affected by this Declaration is situated in Salt Lake County, State of Utah, and is described as follows:

Phase One

BEGINNING at a point North 89°53'40" west along the Section line 1008.90 feet from the Southeast Corner of Section 28, Township One South, Range one East, Salt Lake Base and Meridian, and running thence North 89°53'40" West along said Section line 232.01 feet to the East line of 1850 East Street; thence North 0° 54'10" West along said East line 330.30 feet to the southwest corner of the parcel described in the Record of survey Map of "Capstone" (Phase No. 2) recorded in Book KK at Page 831; thence South 89°53' 40" East along the Southerly boundary of said parcel 223.82 feet; thence South 0° 06'20" West 81.00 feet; thence North 89° 53'40" West 11.00 feet; thence South 0° 06'20" West 185.25 feet; thence South 89° 53'40" East 25.00 feet; thence South 0° 06'20" West 64.00 feet to the point of BEGINNING.

Phase Two

ALSO: BEGINNING at a point North 0°04' East 330.25 feet and North 89° 53'40" West 945.10 feet from the southeast Corner of Section 28, Township 1 south, Range 1 East, Salt Lake Base and Meridian (said point lying on the projection of the Northerly boundary of the parcel described in the Record of survey Map of Capstone (Phase No. 1) recorded in Book II at Page 27) and running thence North 89° 53'40" West along the projection and Northerly boundary of said parcel 300.90 feet to the Northwest corner of said parcel; thence North 0° 54'10" West 212.03 feet; thence South 89° 56' East 394.49 feet; thence South 0° 04' West 84.00 feet; thence North 89° 56' West 26.00 feet; thence South 0° 4' West 107.20 feet; thence North 89° 56' West 64.00 feet; thence South 0° 04' west 21.00 feet to the point of BEGINNING.

Phase Three

BEGINNING at a point N89° 53'40' 869 feet along the section line from the southeast corner of section 28, Township 1 South, Range 1 East, Salt Lake Base and Meridian; and running thence N89° 53' 14011W 139.90 feet along the section line to the Southeast corner of "Capstone - Phase No. 1", a Utah condominium project as filed in the office of the Salt Lake County Recorder; thence along the following five courses along the eastern boundary of said "Capstone - Phase No. 1"; N0° 06'20" E 64.00 feet, N89° 53'40" W 25.00 feet, N0° 06'20"E 185.25 feet, S89° 53'40"E 11.00 feet, N0° 06' 20"E 81.00 feet to the Northeast corner of said "Capstone Phase No.

1", which point also lies on the southern boundary of "Capstone - Phase No. 2", a Utah condominium project as filed in the office of the Salt Lake County Recorder thence along the following five courses along the southern and eastern boundaries of the said "Capstone - Phase No. 2"; S99° 53'40"E 77.08 feet; N0° 04'00"E 21.00 feet S89° 56'00"E 64.00 feet, N0° 04'00"E 107.20 feet, S89° 56' 00"E 26.00 feet to the southeast corner of said "Capstone - Phase No. 2" which point also lies on the western boundary of "East Mill Creek Subdivision"; thence along the western boundary of said "East Mill Creek Subdivision" S0° 04'00"W 121.00 feet to the southwest corner of said subdivision; thence N89° 56'00"W 13.18 feet; thence S0° 06'12"W 337.50 feet to the point of beginning. Containing 1.298 acres.

Phase Four

BEGINNING at a point on the eastern boundary of "Capstone Condominiums - Phase Three", a Utah condominium project as filed in the office of the Salt Lake County Recorder. said point being N89°53'40"W 869.00 feet and N0° 06' 20"E 224.72 feet from the southeast corner of Section 28, Township 1 South, Range 1 East, Salt Lake Base and Meridian; and running thence N0° 06'20"E 112.94 feet along the eastern boundary line of said "Capstone Condominiums Phase Three" to a point on the south boundary line extended of "East Mill Creek Subdivision"; thence S89° 56'E along said line 353.38 feet to a point 6.24 feet more or less N89° 56'W from the southeast corner of lot 14 of said subdivision; thence S0° 06'20"W 113.18 feet; thence N89° 53'40"11W 353.38 feet to the point of beginning. Containing 0.917 acres.

Parcel Numbers

| | |
|------------------------------|------------------------------|
| Capstone PH 1 Condo | 16284790080000 |
| | 16284790090000 |
| 16284800020000 | 16284790100000 |
| 16284800030000 | 16284790110000 |
| 16284800040000 | 16284790120000 |
| 16284800050000 | 16284790130000 |
| 16284800060000 | 16284790140000 |
| 16284800070000 | 16284790150000 |
| 16284800080000 | 16284790160000 |
| 16284800090000 | 16284790170000 |
| 16284800100000 | 16284790180000 (Common Area) |
| 16284800110000 | |
| 16284790180000 (Common Area) | Capstone PH 3 Condo |
| | 16284810020000 |
| Capstone PH 2 Condo | 16284810030000 |
| | 16284810040000 |
| 16284790020000 | 16284810050000 |
| 16284790030000 | 16284810060000 |
| 16284790040000 | 16284810070000 |
| 16284790050000 | 16284810080000 |
| 16284790060000 | 16284810090000 |
| 16284790070000 | 16284810100000 |

16284810110000
16284790180000 (Common Area)
Capstone PH 4 Condo
16284820020000
16284820030000
16284820040000
16284820050000
16284820060000

16284820070000
16284820080000
16284820090000
16284820100000
16284820110000
16284820120000
16284820130000
16284790180000 (Common Area)

EXHIBIT B

ALLOCATED INTEREST IN COMMON AREAS, COMMON EXPENSE LIABILITY, AND VOTING

Each Owner has a $1/48^{\text{th}}$ ownership interest in the Common Areas, is responsible for $1/48^{\text{th}}$ of the Common Expenses, and has a $1/48^{\text{th}}$ voting share.