

When Recorded, Return to:

Kane Devco, LLC
Attn: Mat Niesen
285 South 400 East, Suite 216
Moab, Utah 84532

DECLARATION
OF
CONDOMINIUM
FOR
KANE CREEK CONDOMINIUMS
MOAB, UTAH

MARCH 2021

TABLE OF CONTENTS

	PAGE
ARTICLE 1. DEFINITIONS.....	1
ARTICLE 2. PURPOSE; SUBMISSION TO ACT; GENERAL PROVISIONS	5
2.1 Purpose; Submission to Act.....	5
2.2 Description of Buildings.....	6
2.3 Presumed Boundaries	6
2.4 Conversion of Convertible Land to Units.....	6
2.5 Limitation on Convertible Land	6
2.6 Conversion Procedure.....	7
2.7 No Obligation to Convert or Construct.....	7
2.8 Covenants Run with Land.....	7
ARTICLE 3. UNITS	7
3.1 Subdivision of Property	7
3.2 Nature of Units.....	7
3.3 Nature of Undivided Interests.....	8
3.4 Conveyance of Units.....	8
3.5 Improvement of Units.....	8
3.6 Maintenance of Units and Limited Common Elements.....	9
3.7 No Division of Units.....	9
3.8 Separate Taxation	9
ARTICLE 4. THE ASSOCIATION	10
4.1 Association.....	10
4.2 Membership	10
ARTICLE 5. BOARD.....	10
5.1 Establishment.....	10
5.2 Composition.....	11
5.3 Officers and Agents	11
5.4 Records	11
5.5 Professional Management.....	12
5.6 Liability.....	12
5.7 Initial Agent for Service of Process.....	13
5.8 General Standard.....	13
ARTICLE 6. COMMON ELEMENTS; COMMON EXPENSES; ASSESSMENTS	13
6.1 Common Elements.....	13
6.2 Annual Budget	13
6.3 Assessments.....	14
6.4 Collection of Assessments	15
6.5 Estoppel Statement	16
6.6 Reserve Fund	16
6.7 Reinvestment Fee.....	17
ARTICLE 7. EASEMENTS	18
7.1 Easements for Encroachments	18
7.2 Easements for Maintenance	18
7.3 Easements for Units	18
7.4 Easement for Completion of Development	19

7.5 General Provisions	19
ARTICLE 8. USE RESTRICTIONS	19
8.1 Use	19
8.2 No Short Term Rental	19
8.3 Nuisance.....	19
8.4 Unsightly Work, Hobbies or Unkempt Conditions	20
8.5 Garbage, Refuse and Debris	20
8.6 Subdivision of a Unit	20
8.7 Temporary Structures	20
8.8 Landscaping.....	20
8.9 Exterior Alteration	21
8.10 Business Use.....	21
8.11 Parking and Vehicles	21
8.12 Windows and Window Coverings	21
8.13 Animals.....	21
8.14 Insurance.....	22
8.15 Laws.....	22
8.16 Damage or Waste.....	23
8.17 Mail Boxes.....	23
ARTICLE 9. INSURANCE.....	23
9.1 Insurance.....	23
9.2 Waiver of Subrogation against Owners and Association	24
9.3 Loss; Deductibles.....	24
9.4 Insurance Trustee.....	25
9.5 Association’s Right to Negotiate Claims and Losses and Receive Proceeds	25
9.6 Amendments to this Section to Comply with Applicable Law	26
ARTICLE 10. DESTRUCTION; CONDEMNATION; RESTORATION	26
10.1 Definitions	26
10.2 Board Determinations	27
10.3 Restoration.....	27
10.4 Sale of Property	28
10.5 Authority to Represent Owners	28
10.6 Reallocation of Interests on Condemnation.....	28
10.7 Allocation of Proceeds upon Partial Condemnation.....	29
ARTICLE 11. MORTGAGEE PROTECTION.....	29
11.1 Eligible Mortgagee	29
11.2 Matters Requiring Prior Eligible Mortgagee Approval	30
11.3 Availability of Governing Documents and Financial Statements	30
11.4 Priority of Declaration; Subordination of Lien.....	30
ARTICLE 12. ENFORCEMENT; DISPUTE RESOLUTION	31
12.1 Agreement to Encourage Resolution of Disputes without Litigation.....	31
12.2 Dispute Resolution Procedures.....	32
12.3 Enforcement and Right to Recover Attorney’s Fees and Costs.....	33
12.4 Self Help Rights of Association.....	34
12.5 Fines.....	34
12.6 Suspension of Use Rights	35

12.7 Notice and Hearing	35
12.8 Declarant’s Rights.....	35
12.9 Initial Development and Construction.....	36
ARTICLE 13_ MISCELLANEOUS	38
13.1 Amendment.....	38
13.2 Sale of Property	38
13.3 Declarant’s Right to Amend	38
13.4 Limitation on Improvements by Association.....	39
13.5 Declarant’s Rights Assignable.....	39
13.6 Transfer of Management.....	39
13.7 Certain Provisions Applicable to Declarant.....	39
13.8 Interpretation.....	39
13.9 Covenants to Run with Land	40
13.10 Security	40
13.11 Effective Date	40

Exhibit A:	Legal Description
Exhibit A-1:	Legal Description of Expanable Land
Exhibit A-2:	Legal Description of Convertible Land
Exhibit B:	Plat Maps
Exhibit C:	Description of Undivided Interest and Voting Rights
Exhibit D:	Bylaws

**DECLARATION
OF
CONDOMINIUM
FOR
KANE CREEK CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM FOR KANE CREEK CONDOMINIUMS (this “**Declaration**”) is executed as of _____, 2021 (the “Effective Date”), by KANE DEVCO, LLC, a Utah limited liability company (the “**Declarant**”).

RECITALS:

- A. Declarant is the owner of certain land located in Grand County, Utah, hereinafter referred to as the “Land” and more particularly described in Exhibit “A” of this Declaration which is attached hereto and made a part hereof.
- B. Declarant has constructed or will construct certain buildings and improvements thereon in accordance with the plans and drawings set forth in the Record of Survey Map which has been filed in the office of the Grand County Recorder. The Project will include two phases consisting of three buildings and 47 Units. The Project contains convertible land upon which an additional 20 Units may be constructed.
- C. Declarant desires by filing this Declaration and the Record of Survey Map to submit the above-described real property and the said buildings and other improvements being constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a project known as Kane Creek Condominiums.
- D. Declarant desires and intends to sell fee title to the individual Units contained in said project, together with undivided ownership interests in the Common Areas and Facilities appurtenant thereto, to various purchasers, subject to the covenants, limitation, and restrictions contained herein.
- E. Kane Creek Condominiums will be governed by this Declaration and the Bylaws attached hereto. All Units within the Project shall be part of the Kane Creek Condominiums.

**ARTICLE I
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings given them below:

- 1.1 “**Act**” means the Utah Condominium Ownership Act, Utah Code Annotated, Title 57, Chapter 8, as in effect on, and as amended after, the date of this Declaration, and any successor or substitute provisions.

- 1.2 “**Annual Assessment**” means an assessment levied pursuant to Section 6.3(a) hereof.
- 1.3 “**Annual Budget**” means a budget that sets forth an itemization of the anticipated Common Expenses for the calendar year to which such Annual Budget pertains.
- 1.4 “**Articles of Incorporation**” means the Articles of Incorporation of the Association on file or to be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.
- 1.5 “**Assessment**” means Annual Assessments, Special Assessments, Individual Assessments, and any other charge imposed or levied by the Association against an Owner, including but not limited to those related to Common Expenses as well as miscellaneous assessments for capital improvements and for the purpose of restoring and reconstructing the Project in the event of casualty, all as provided in this Declaration.
- 1.6 “**Association**” means Kane Creek Condominium Owner’s Association, a Utah nonprofit corporation.
- 1.7 “**Board of Directors**” or “**Board**” means the board of directors of the Association appointed or elected in accordance with the Governing Documents, which shall serve as the “management committee” (as defined in the Act) of the Association.
- 1.8 “**Building**” means any of the buildings constructed or to be constructed on the Land.
- 1.9 “**Bylaws**” means the Bylaws of the Association, as they may be amended from time to time. A copy of the initial Bylaws is attached hereto as Exhibit D.
- 1.10 “**Common Elements**” means all parts of the Project that are not Units, including but not limited to the Land; all portions of the Buildings not contained within the Units, including but not limited to the foundation, columns, girders, beams, supports, perimeter and supporting walls, roofs, patios, balconies, entrances and exits; the mechanical installations of the Project consisting of the equipment and materials making up any central services which exist one or to serve more of the Units, including but not limited to pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith, whether outside or inside a Building); yards, outdoor lighting, fences, landscaping and sidewalks; and areas used for common disposal of trash and recycling.
- 1.11 “**Common Expenses**” means all expenses of operation (including common utilities and services), management, maintenance, repair or replacement of the Common Elements, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Elements, including but not limited to premiums for the insurance obtained by the Board pursuant to this Declaration or the Act, and any other cost, expense or fee properly incurred by the Association in connection with the performance of its obligations under the Governing Documents.

- 1.12 “**Condominium Unit**” means a Unit together with the Undivided Interest appurtenant to such Unit.
- 1.13 “**Convertible Land**” means the land identified on the Plat as convertible land and more particularly described on Exhibit A-2 attached hereto and incorporated herein, upon which additional units may be constructed in accordance with Section 2.4.
- 1.14 “**County Records**” means the official records of the Grand County recorder.
- 1.15 “**Declarant**” means Kane Devco, LLC, a Utah limited liability company, and its successors and assigns.
- 1.16 “**Declarant Control Period**” means the period commencing on the date hereof and ending on the date which is the earliest of (a) the date on which Declarant no longer owns a Unit, (b) ten years from the date of recording of this Declaration, except that the Declarant Control Period shall be limited to six years for the purpose of exercising the rights granted under U.C.A. 57-8-16.5(1) (appointing Members to the management committee) or (c) the date on which Declarant executes a document and provides notice to the Members that the Declarant Control Period is being terminated.
- 1.17 “**Eligible Mortgagee**” means a mortgagee or beneficiary under a mortgage or deed of trust encumbering a Unit who has requested notice in writing of certain matters from the Association in accordance with Section 11.1.
- 1.18 “**Emergency Repairs**” means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to property, including but not limited to any Common Elements or a Unit or Units, or imminent danger to persons.
- 1.19 “**Family**” means a group of natural persons residing in the same Unit and maintaining a common household.
- 1.20 “**FHLMC**” means the Federal Home Loan Mortgage Corporation.
- 1.21 “**FNMA**” means the Federal National Mortgage Association.
- 1.22 “**Governing Documents**” means this Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations.
- 1.23 “**Guest**” means a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a Resident.
- 1.24 “**Individual Assessment**” means an Assessment levied pursuant to Section 6.6.
- 1.25 “**Land**” means that certain real property that is located in Grand County, Utah and that is described on Exhibit A attached hereto. The Land includes any easements that benefit the Land from time to time including any easements that are set forth on the Plat.

- 1.26 “**Limited Common Elements**” means those portions of the Common Elements designated in this Declaration or the Plat as reserved for the use of a certain Unit or Units to the exclusion of the other Units. Without limiting the generality of the foregoing, any balcony, patio, or deck serving one Unit shall be a Limited Common Element appurtenant to that Unit.
- 1.27 “**Majority of the Owners**” means, with respect to any matter presented to the Owners for a vote, the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests held by Owners entitled to vote at the time such vote is taken.
- 1.28 “**Majority**” means more than fifty percent (50%) of the total Eligible Votes.
- 1.29 “**Manager**” means a person or entity engaged to manage and operate the Project.
- 1.30 “**Member**” means an Owner. All Owners are Members of the Association and possess the rights and duties set forth in this Declaration and the Bylaws.
- 1.31 “**Mortgage**” means either a mortgage or deed of trust encumbering a Unit but shall not mean or refer to an executory contract of sale.
- 1.32 “**Mortgagee**” means a mortgagee or a beneficiary under a Mortgage encumbering a Unit but shall not mean or refer to a seller under an executory contract of sale.
- 1.33 “**Mortgage Servicer**” shall mean a Mortgagee who services any Mortgage on any individual Unit in the Project on behalf of FHLMC and/or FNMA.
- 1.34 “**Owner**” means the person who is the owner of record (in the office of the County Recorder of Grand County, Utah) of a Unit. The term “Owner” does not mean or include a Mortgagee or a trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
- 1.35 “**Plat**” means the condominium plat entitled Kane Creek Condominiums, recorded in the office of the County Recorder of Grand County at approximately the same times as this Declaration, as such plat may be amended from time to time. The Plat will show the location of the Units, Common Elements, and Limited Common Elements.
- 1.36 “**Project**” means the Land, the Units, and the Common Elements, collectively.
- 1.37 “**Reserve Fund**” shall have the meaning given it in Section 6.6.
- 1.38 “**Resident**” means an Owner or a tenant or Family member of an Owner who is residing in a Unit.
- 1.39 “**Rules and Regulations**” means the rules and regulations established by the Board of Directors to control, regulate or establish guidelines for the conduct of Owners, Residents, Guests, and others in the Project.

- 1.40 “**Special Assessment**” means an Assessment levied pursuant to Section 6.3.
- 1.41 “**Total Votes**” means the total voting rights attributable to all the Units, as set forth on Exhibit C attached hereto.
- 1.42 “**Undivided Interest**” means an undivided interest in the Common Elements made appurtenant to each Unit by the provisions of this Declaration, as set forth in Exhibit C. The Undivided Interest of a Unit shall be equal with all other Units and shall not be calculated or determined based of the relative size or square footage of Units.
- 1.43 “**Unit**” means each separate physical part of the Project intended for independent use, including one or more rooms or spaces located or to be located in one or more floors or part or parts of floors in a Building, as depicted on the Plat. Each Unit comprises enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. The following are part of the Unit: (i) lath; (ii) furring; (iii) wallboard; (iv) plasterboard; (v) plaster; (vi) paneling; (vii) tiles; (viii) wallpaper; (ix) paint; (x) finished flooring; and (xi) any other material constituting part of the finished surface of a wall, floor, or ceiling. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Elements: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Element (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed.
- 1.44 “**Utility Equipment**” means pipes, sprinklers, wires, ducts, flues, cables, conduits, public utility lines, transformers, switch gear vaults, and other utility equipment serving the Project.

ARTICLE II PURPOSE; SUBMISSION TO ACT; GENERAL PROVISIONS

- 2.1 **Purpose; Submission to Act.** Declarant intends, by recording this Declaration and the Plat, to create a Utah residential condominium project containing up to sixty-seven (67) Units, to be known as Kane Creek Condominiums. The Land and all improvements now or hereafter constructed thereon are hereby submitted to the Act. The Project is not an expandable condominium, but the Project does include the Convertible Land identified on the Plat upon which additional Units may be constructed. The Project (i) is not a

contractible condominium; (b) is not a leasehold condominium; and (c) does not contain time-period units, as all of such terms are defined in the Act.

- 2.2 **Description of Buildings.** The Project contains three (3) buildings and other improvements related thereto. The Project includes Convertible Land upon which one Building containing twenty (20) Units may be constructed if the necessary approvals are obtained by Declarant. The Buildings as shown on the Plat are each multi-level building each containing the number of Units as shown on the Plat. The Convertible Land is intended to be a multi-level building similar to the original three Buildings. Each Building is constructed principally of wood framing with wood, aluminum and/or vinyl siding exteriors. There are no basements in the Project.
- 2.3 **Presumed Boundaries.** In interpreting the Plat or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building or any minor variance between the boundaries shown on the Plat and those of the Building or such Unit.
- 2.4 **Conversion of Convertible Land to Units.** Declarant reserves the right at Declarant's option, exercisable without the consent of any Unit Owner, to construct additional Units on the Convertible Land, from time to time at Declarant's choosing, but within the five (5) years of the Effective Date. Declarant knows of no circumstance which will terminate Declarant's option to convert the Convertible Land prior to the expiration of such five (5) year time limit.
- 2.5 **Limitation on Convertible Land.** Declarant's right to construct additional Units on the Convertible Land shall be subject to the following limitations:
- (a) The Convertible Land is identified on the Plat and described in Exhibit A-2 hereto;
 - (b) The maximum number of Units that may be created on the Convertible Land is twenty (20) Units.
 - (c) Units constructed on the Convertible Land shall utilize one hundred percent (100%) of the Convertible Land the entirety of which shall be used for residential purposes.
 - (d) All buildings constructed on the Convertible Land shall be architecturally compatible in terms of quality of construction, construction materials, and architectural style, with buildings constructed on the remainder of the Project.
 - (e) Units constructed on the Convertible Land shall be substantially identical to the Units on other portions of land within the Project.
 - (f) Upon completion of Units on the Convertible Land, the total number of Units existing in the Project shall not exceed sixty-seven (67);

- (g) Declarant reserves the right to create Limited Common Area and facilities within the Convertible Land comparable to such Limited Common Areas and facilities within the remainder of the Project.
 - (h) The right to convert the Convertible Land to Units shall expire five (5) years after this Declaration is filed for record in the office of the County Recorder of Grand County, Utah.
- 2.6 **Conversion Procedure.** Subject to compliance with the provisions of Section 2.5, the addition of any Units on the Convertible Land shall become effective upon the concurrent recordation in the office of the County Recorder of Grand County, Utah, a supplemental or amended Plat which (a) is signed by the Declarant; (b) describes the Units constructed on the Convertible Land; (c) declares that the additional Units are to be held, transferred, sold, conveyed, and occupied subject to this Declaration; and (d) includes any adjustments in the appurtenant undivided interests pertaining to each Unit including those resulting from the conversion of the Convertible Land to Units. Declarant may exercise the right to construct Units on the convertible land, including the preparation and recording of an amendment to this Declaration reflecting the changes created by the addition of Units on the convertible land, all without seeking or obtaining consent or authorization from any Owner.
- 2.7 **No Obligation to Convert or Construct.** Declarant has no obligation hereunder to add any Units to the Project on the Convertible Land.
- 2.8 **Phases.** The initial 47 Units in the Project shall be constructed in two (2) phases. These Units are not part of or subject to the Convertible Land provisions contained herein. The first phase shall consist of 33 units located in one (1) Building located on the southwest corner of the Project. The second phase shall consist of 14 Unit in one (1) Building located on the northeast portion of the project. Each phase shall be subject to the provisions of this Declaration. Phase 2 will be constructed following the construction of Phase 1, but no representations are made regarding the timing of the Phase 2 construction.
- 2.9 **Covenants Run with Land.** This Declaration and all of the provisions herein shall run with the land and may be enforced by Declarant, the Management Committee and any Owner and their respective successors in interest. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and subordinate to all of the provisions of this Declaration, and in the event of foreclosure of any Mortgage or other encumbrance, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure. All Owners, Residents, Guests, and any other person who uses or occupies the Project shall be subject to the Governing Documents. All decisions and determinations made by the Board in accordance with the Act or other Governing Documents shall be binding on all the Owners and occupants of the Project.

ARTICLE III UNITS

- 3.1 **Subdivision of Property.** The Project is hereby subdivided into Condominium Units, with each such Condominium Unit consisting of a Unit, the right to use appurtenant Limited Common Elements, if any, and an appurtenant Undivided Interest, as set forth on Exhibit C attached to this Declaration.
- 3.2 **Nature of Units.** Each Condominium Unit shall for all purposes constitute real property and may be individually conveyed, leased, encumbered, inherited or devised by will. Any Condominium Unit may be held and owned by more than one person as joint tenants, as tenants in common or in any other real property tenancy relationship recognized under the laws of the State of Utah. Each Owner shall be entitled to the exclusive ownership and possession of its Unit and, to the extent applicable, the exclusive use of any Limited Common Elements appurtenant only to its Unit subject to the provisions of this Declaration. Each Owner may separately mortgage or otherwise encumber its Condominium Unit, provided that each Mortgage of any Condominium Unit shall be subordinate to this Declaration. No Owner may mortgage or otherwise encumber the Common Elements, except to the extent of the Undivided Interest appurtenant to its Unit.
- 3.3 **Nature of Undivided Interests.** Each Owner shall be entitled to an Undivided Interest in the percentage expressed in the attached Exhibit C. Each Owner may use the Common Elements on a nonexclusive basis, but only in accordance with the purposes for which they were intended, subject to the Governing Documents. Neither any Undivided Interest nor the right of exclusive use of any Limited Common Elements shall be separated from the Unit to which it is appurtenant. The Common Expenses shall be charged to, and the voting rights shall be available to, the Owners according to their respective Undivided Interests.
- 3.4 **Conveyance of Units.** Every contract for the sale of a Unit, every deed conveying a Unit, and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located, and its Unit number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to a Unit, and to incorporate all the rights incident to ownership of a Unit and all of the limitations on such ownership as described in this Declaration.
- 3.5 **Improvement of Units.** Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit; provided, however, that such walls, fixtures and improvements shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project; impair the structural integrity of the Building; or encroach on or interfere with any Common Elements. No Owner shall

remove or alter any interior bearing walls within a Unit without first providing to the Management Committee (at the Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations (and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building and then providing structural reinforcement beams or supports for the modified bearing walls. No Owner shall do any work on or make any alterations or changes to the Common Elements without the prior written consent of the Management Committee.

3.6 **Maintenance of Units and Limited Common Elements.**

- (a) **Maintenance of Units.** Each Owner, at its sole cost and expense, shall keep the interior of its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements, in good condition and repair and in a clean and sanitary condition.
- (b) **Maintenance of Limited Common Elements.** Notwithstanding anything herein regarding maintenance of Common Elements, each Owner, at its sole cost and expense, shall maintain in good condition and repair all Limited Common Elements appurtenant to such Owner's Unit. Without limiting the generality of the foregoing, (i) each Owner shall maintain the exterior walls, window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such exterior surface, window glass or door on removal, breakage or other damage.
- (c) **Failure to Maintain.** If any Owner fails to maintain its Unit or the Limited Common Elements for which such Owner is responsible, or if any Unit or appurtenant Limited Common Elements develops an unsanitary or unclean condition or falls into a state of disrepair and the responsible Owner fails to correct such condition promptly following written notice from the Board, or if any removed, broken or damaged window glass or door referred to in the preceding subsection (b) is not immediately repaired or replaced by the Owner obligated to do so, then the Board may (but is not obligated to), at the expense of such Owner and without liability to such Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Board pursuant to this Section, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute an Individual Assessment.

3.7 **No Division of Units.** No Unit may be further divided or subdivided, or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to joint tenancy,

tenancy in common, or other form of joint undivided ownership). No Owner may lease less than all of its Unit.

- 3.8 **Separate Taxation.** Each Condominium Unit (comprising a Unit and an appurtenant Undivided Interest) shall be deemed to be a separate parcel for purpose of assessment and taxation and shall be subject to separate assessment and taxation. Neither the Project, any Building, nor any of the Common Elements may be considered as a separate parcel for purposes of assessment or taxation.

ARTICLE IV THE ASSOCIATION

4.1 **Association.**

- (a) **Association.** The Declarant has caused the Association to be incorporated as a Utah nonprofit corporation. Each Owner shall automatically be a member of the Association. The Board shall act as the board of directors and the management committee of the Association.
- (b) **Registration with the State.** In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1 or any successor provision, the Association shall be registered with the state Department of Commerce, Division of Real Estate and shall update its registration as required by law.
- (c) **Bylaws.** The Bylaws of the Association are attached to this Declaration as Exhibit D. The provisions of the Utah Revised Nonprofit Corporation Act, as in effect on, and as amended after, the date of this Declaration, shall supplement the Bylaws to the extent that such statutory provisions are not inconsistent with this Declaration or the express provisions of the Bylaws.

- 4.2 **Membership.** Each Owner shall be required to be a member of 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 proportionate interest and by the same type of tenancy in which title to the Unit is held. Ownership of a Unit cannot be separated from membership in the Association; each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit. Membership will begin immediately and automatically upon becoming an Owner and shall

terminate immediately and automatically upon ceasing to be an Owner. Each Unit shall have one (1) vote.

ARTICLE V BOARD

5.1 **Establishment.** Subject to the provisions of this Declaration, the Project shall be operated, managed and maintained by the Board. The Board, acting on behalf of the Association, shall be vested with, and shall have all rights, powers and authority given to a management committee or an association of unit owners under the Act and all rights, powers and authority as are necessary to perform its duties under the Governing Documents, which shall include, but not be limited to, the rights, powers and authority to:

- (a) administer and enforce the covenants, conditions, restrictions, easements, and other provisions of the Governing Documents;
- (b) maintain and keep in good order, condition and repair all the Common Elements;
- (c) without the vote or consent of the Owners, Mortgagees, or of any other person, grant or create (and/or to relocate), on such terms as it deems advisable, reasonable licenses, rights-of-way and easements over, under, across and through the Common Elements for utilities and other purposes reasonably necessary or useful for the proper operation and maintenance of the Project;
- (d) sue and be sued on behalf of the Association;
- (e) enter into contracts that are within the scope of the powers and duties of the Board;
- (f) promulgate such Rules and Regulations as may be necessary or desirable to ensure that the Project is maintained and used in a manner consistent with this Declaration and the interests of the Owners and to establish penalties for the infraction of such Rules and Regulations;
- (g) levy and collect Assessments for the payment of Common Expenses;
- (h) perform any other acts and to enter into any other transactions authorized by the Governing Documents or the Act or which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

5.2 **Composition.**

- (a) During the Declarant Control Period, the Board shall have three members who shall be appointed by the Declarant.
- (b) After the expiration of the Declarant Control Period, the Board shall consist of three natural persons elected by the Members in accordance with the Bylaws. Only

Owners (and officers, partners, managers, members and agents of Owners who are not natural persons) shall be eligible for Board membership.

5.3 **Officers and Agents.** The Board shall perform its functions through those members who are elected as officers by the Board in accordance with the Bylaws and through such agents or employees as the Board may appoint or employ.

5.4 **Records.**

(a) The Board shall keep detailed, accurate records in chronological order of the receipts and expenditures of the Association. Such records shall be available for examination by the Owners at convenient hours on weekdays. The Board shall maintain up-to-date records showing (a) the name of each person who is an Owner, the address of the Unit owned by such Owner, and the mailing address and electronic mail address (if any) of such Owner; and (b) the name and address of each Eligible Mortgagee and the Unit that is encumbered by such Eligible Mortgagee.

(b) Upon any transfer of a fee interest in a Condominium Unit, the transferee shall provide to the Association evidence that the transfer has occurred and that the deed or instrument of conveyance is of record in the County Records. The Association may rely on such information or, at its option, on current ownership information that is obtained from the County Records. The mailing address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless such Owner provides written notice to the Association of a different mailing address.

(c) The Board shall make available for inspection on request during normal business hours or under other reasonable circumstances to Owners and Mortgagees, current copies of this Declaration, the Plat, the Rules and Regulations, and the books, records and financial statements of the Association to the extent required under the Act or other applicable law.

5.5 **Professional Management.** The Board may (but is not obligated to) engage a professional manager to perform any functions that are properly the subject of delegation. The manager shall be an independent contractor and not an agent or employee of the Board, shall be responsible for managing the Project for the benefit of the Association and the Owners and shall, to the extent permitted by law and by the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any such management agreement shall run for a reasonable period not to exceed to one year.

5.6 **Liability.** No member of the Board or any officer of the Association shall be liable to the Owners for any mistake of judgment, for negligence or on other grounds, except for such member's own willful misconduct, gross negligence, bad faith or more culpable conduct, subject to the following:

- (a) **General.** Members of the Board and officers of the Association: (a) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (b) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them in their capacity as such, except for their own willful misconduct, gross negligence, bad faith or more culpable conduct, nor for acts performed for them in their capacity as such; and (c) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.
- (b) **Specific Listing.** Without limiting the generality of subsection (a) above, and notwithstanding any provision of the Governing Documents to the contrary, neither the Board, the Association, nor any member of the Board shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Project or other cause beyond such person's reasonable control.
- (c) **Indemnity.** The Association shall indemnify each member of the Board and each officer of the Association against all claims made by third parties arising out of any contract made by the Board on behalf of the Owners, unless such contract was made in bad faith. The liability of any Owner arising out of any contract made by the Board or an officer of the Association or out of the indemnification provision set forth in the immediately preceding sentence shall be limited to the total liability concerned multiplied by such Owner's Undivided Interest.

5.7 **Initial Agent for Service of Process.** The following shall be the initial person to receive service of process on behalf of the Project, the Board and the Association:

Mathew Nielsen, 285 S. 400 E. Ste. 216, Moab UT 84532

The Board shall have the right to appoint a successor or substitute process agent at any time and from time to time. The name and address of any such successor or substitute agent shall be specified by an appropriate instrument recorded in the Grand County Recorder's office, a copy of which shall be delivered to each Owner. Service of process on two or more Owners in any action relating to the Common Elements or more than one Unit may be made on the agent designated above.

5.8 **General Standard.** Notwithstanding any provision in this Declaration to the contrary, the Board shall act fairly and reasonably in discharging its duties under this Declaration.

ARTICLE VI
COMMON ELEMENTS; COMMON EXPENSES; ASSESSMENTS

- 6.1 **Common Elements.** The Association shall be responsible for the operation, management, maintenance, repair and replacement of the Common Elements and the making of any additions or improvements to the Common Elements as may be reasonably necessary to keep them clean, safe, functional, attractive and generally in good condition and repair. The maintenance of the outdoor portions of the Common Elements shall include but not be limited to the removal of weeds and debris and periodic cleaning, sweeping, and removal of ice and snow. Without limiting the generality of the foregoing, the Association shall be responsible for maintenance of the water and sewer connections servicing the Project, except for those water and sewer connections which constitute a portion of a Unit.
- 6.2 **Annual Budget.** Before November 1st of each year the Board shall prepare an Annual Budget for the next following calendar year. In preparing such Annual Budget, the Board shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. After the expiration of the Declarant Control Period, such Annual Budget shall be subject to the approval of a majority of the votes present at a meeting of the Members at which such Annual Budget is presented and voted on.
- 6.3 **Assessments.** Each Owner shall pay Assessments in accordance with the following:
- (a) **Annual Assessments.** Prior to the first day of January of each calendar year, the Association shall notify each Owner of the amount of such Owner's share of the Common Expenses for that calendar year as set forth in the Annual Budget for such year (the Owner's "**Annual Assessment**"). Each Annual Assessment shall be paid in monthly installments, each in an amount equal to one-twelfth of the Annual Assessment, which each such installment due on the first day of each calendar month.
 - (b) **Special Assessments.** The Board of Directors may levy in any calendar year one or more special assessments (each, a "**Special Assessment**"), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement within the Property or any facilities located in the Property, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current Annual Budget. Notice of the amount and due dates for any Special Assessment shall be sent to each Owner at least 30 days prior to the due date. If any Special Assessment is to be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities in the Property), and if the total amount of the Special Assessment levied for such construction exceeds 10% of the total Annual Budget for that year, then the Special Assessment shall require the approval of a Majority of Owners.

- (c) **Late Payments and Assessments.** The Board may establish and assess reasonable charges for delinquent payments of any Assessment or any installment thereof. A late fee equal to 5% of the delinquent amount and interest at the rate of 18% per annum on the delinquent amount shall be deemed to be reasonable. All payments made by an Owner under this Declaration shall be applied first to pay any costs of collection, including attorney fees, next to outstanding Fines and late charges, next to interest, and finally to Assessments or other amounts due from the Owner.
- (d) **Individual Assessments.** All Fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, and any expense (including without limitation attorneys' fees) incurred by the Association as a result of the failure of an Owner to comply with the Governing Documents, shall constitute an "**Individual Assessment.**"
- (e) **No Exemption.** No Owner may exempt itself from liability for its Assessment obligations by waiver of the use or enjoyment of any of the Common Elements or abandonment of its Unit. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for any action or inaction of the Board or the Association.
- (f) **Owner's Obligation to pay Assessments.** Notwithstanding any language in this Declaration or in this Article VI to the contrary, Owner's shall not be obligated to pay an Assessment until an unconstructed Unit is fully constructed. A Unit shall be deemed to be an unconstructed Unit until (i) the Unit has had its cabinets, fixtures, paint and carpet installed, and (ii) a certificate of occupancy has been issued by the appropriate government official.

6.4 **Collection of Assessments.**

- (a) **Personal Obligation of Owner.** Every Owner shall pay Assessments in the amounts and at the times determined by the Board in accordance with this Declaration and the Act. Each Assessment assessed against a Unit is a personal debt and obligation of the Owner of the Unit at the time the Assessment is made. In any voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit 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. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.
- (b) **Cessation of Services.** If an Owner shall be in default for the period of one month in the payment of Assessments, then the Association may, at its option, and for so long as such default shall continue, cease to provide any or all services that would

otherwise be provided by the Association to such Owner's Unit, to the extent such services pertain to such Unit.

- (c) **Collection of Rent.** If an Owner shall at any time lease or rent its Unit and shall default for a period of 60 days in the payment of Assessments, then the Association may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, in compliance with applicable provisions of the Act and the Governing Documents.
- (d) **Lien.** Each Assessment shall constitute a lien on the applicable Owner's Condominium Unit, which lien may be foreclosed in the manner of the foreclosure of a deed of trust or by any other method available under applicable law for the foreclosure of liens. For the purpose of foreclosure by trustee's sale, the Declarant appoints Anderson Oliver Title Company, 94 Grand Avenue, Moab, Utah 84532, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit. Pursuant to Utah Code §§ 57-1-20 and 57-8-45, the Declarant hereby conveys and warrants to such trustee, with power of sale, the Condominium Units and all improvements to the Units for the purpose of securing payment of Assessments under the terms of this Declaration. An Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Association may appoint another qualified trustee by executing a substitution of trustee form. In any foreclosure of a lien for Assessments, the Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the same lien. The Association may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

6.5 **Estoppel Statement.** The Board shall, on the written request of any Owner or any Mortgagee or prospective Mortgagee or prospective purchaser of a Condominium Unit, and on payment of a reasonable fee in an amount to be determined by the Board subject to any limitations imposed by the Act, issue to the requesting person or persons a written statement setting forth the amount of any unpaid Assessments for such Condominium Unit. Such written statement shall be conclusive on the remaining Owners and the Association in favor of all persons who rely on such written statement in good faith.

6.6 **Reserve Fund.**

- (a) **Reserve Fund.** The Board shall establish and maintain a reserve fund (the "**Reserve Fund**") to cover the cost of repairing, replacing, or restoring Common Elements that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association, as determined by the Owners annually. Reserve funds may be collected as part of Annual Assessments or Special Assessments. If there are surplus monies after payment of all Common Expenses

for any fiscal year, the Board may, in its discretion, (i) retain surplus Association money and credit it against the Assessments for the following fiscal year, or (ii) deposit such surplus in the Reserve Fund. The Association shall segregate money held in the Reserve Fund from regular operating accounts.

- (b) **Reserve Analysis.** The Association shall, every six years, conduct an analysis (a “**Reserve Analysis**”) to determine the appropriate amount needed in the Reserve Fund to satisfy the purposes for which the Reserve Fund is maintained. The Board shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The Reserve Analysis report shall be prepared by a person or persons with (i) experience in current building technologies, (ii) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (iii) the tools and knowledge to prepare a report.
- (c) **Disclosure and Approval at Annual Meeting.** Annually, at the annual meeting of the Owners or a special meeting of Owners, the Board shall present the most recent Reserve Analysis and any updates to the Reserve Analysis and provide an opportunity for Owners to discuss the Reserve Fund and to vote on how to fund the Reserve Fund and in what amount.

6.7 Reinvestment Fee

- (a) **Adoption of Reinvestment Fee.** The Association adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed 0.5% of the value of the unit being sold. The Reinvestment Fee shall be paid by the purchaser of a unit whenever a unit is sold, transferred or conveyed to a new owner.
- (b) **Amount of Reinvestment Fee.** The Reinvestment Fee shall be in the amount of \$350.00. By written resolution, the Board is authorized to increase or decrease the amount of the Reinvestment Fee, but in no event shall the Reinvestment Fee exceed the amount of 0.5% of the value of the unit being transferred.
- (c) **Increases.** If the Board determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Grand County Recorder an amended Notice of Reinvestment Fee, in the form of a Board Resolution, setting forth the amount of the new Reinvestment Fee.
- (d) **Runs with the Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A" (and any Property added hereafter") and is intended to bind successors in interest and assigns of the real property.
- (e) **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit "A".

- (f) **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- (g) **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's Common Areas and the other areas the Association is required to maintain.
- (h) **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
 - (i) an involuntary transfer;
 - (ii) a transfer that results from a court order;
 - (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
 - (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
 - (v) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property in an amount of \$350.

ARTICLE VII EASEMENTS

- 7.1 **Easements for Encroachments.** If on or after the date of this Declaration: (a) any part of the Common Elements encroaches on any part of a Unit; or (b) any part of a Unit encroaches on a part of the Common Elements, then a non-exclusive easement for each such encroachment and for the maintenance of the same shall exist immediately and automatically, and Declarant reserves such easement for the benefit of each Unit and each Common Element. Such encroachments shall not be considered to be encumbrances on any Unit or the Common Elements. Such encroachments may include, without limitation, encroachments caused by error in the original construction of a Building or any other improvements, error in the Plat, settling, rising or shifting of the earth or changes in position caused by repair or reconstruction of the Project.
- 7.2 **Easements for Maintenance.** Some of the Common Elements may be located within the Units or may be conveniently accessible only through the Units. Declarant grants the Association and its agents and representatives a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Elements at reasonable times and under reasonable circumstances as may be necessary for: (a) the maintenance, repair, replacement and cleaning of the Common Elements; or (b) making Emergency Repairs, provided that the Board shall make a reasonable effort to provide notice to the

occupant of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense.

7.3 Easements for Units.

- (a) Declarant reserves for each Unit:
 - (i) a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Elements as necessary for access to and from such Unit;
 - (ii) a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements;
 - (iii) a non-exclusive easement in common with all other Units for Utility Equipment and other Common Elements from time to time and at any time located in any other Units and serving the benefitted Unit.
- (b) Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the installation, maintenance, repair and replacement of Utility Equipment and other Common Elements from time to time and at any time located in such Unit and serving any other Unit.

7.4 Easement for Completion of Development. The Declarant shall have a transferable easement over and on the Common Elements for the purpose of doing all things necessary or appropriate to complete construction of the Project and to make improvements as shown on the Plat. To the extent that damage is inflicted on any part of the Project by any person utilizing this easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

7.5 General Provisions. Each easement and right created by this Article are an appurtenance to the real property benefitted thereby and is a burden on the real property burdened thereby. All conveyances of a Condominium Unit shall be deemed to be made together with and subject to the easements set forth in this Article. The easements created under this Article shall terminate upon the termination of the Declaration. The use of any easement granted under this Declaration shall not disturb unreasonably the quiet enjoyment of any other Unit by its Owner and occupants.

**ARTICLE VIII
USE RESTRICTIONS**

8.1 Use. Each Unit shall be used only for single-family residential purposes. No Building or other structure of any kind shall be erected, altered, placed or permitted to remain on any portion of the Project except with the prior written approval of the Board. The use of the

Units and the Common Elements shall comply with all applicable laws, ordinances and governmental regulations and with the Governing Documents.

- 8.2 **No Short-Term Rental.** No rentals of any Unit or any portion of any Unit for a term of less than 30 days are permitted. No rental for less than 30 days, including nightly or weekly rentals, will be permitted under any circumstances. Without limiting the generality of the foregoing, no Owner may lease or rent any portion of a Unit for transient or hotel purposes. Fifty percent (50%) or more of the Units must be occupied by an Owner. The Board shall adopt rules to track the number of Units occupied by Owners and renters.
- 8.3 **Nuisance.** No Owner, Resident, or Guest shall create or maintain, or engage in any activity which would constitute, a nuisance in, on or about the Project. A “nuisance” includes but is not limited to the following:
- (a) the development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about a Unit or the Common Elements;
 - (b) the storage of any item or property that will cause any Unit or the Common Elements to appear to be in an unclean or untidy condition or that will be noxious to the senses or otherwise disturb the peace, quiet, safety, comfort, or serenity of the other Residents;
 - (c) having any devices or items, instruments, equipment, machinery, fixtures, or things the possession of which is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project by other Residents or Guests.
 - (d) unreasonable noise in, on or about any Unit or the Common Elements; provided, that the threshold for what constitutes unreasonable noise shall be lower after 10:00 p.m. and before 7:00 a.m.
 - (e) any activity which creates or causes an unreasonable amount of traffic in, on or about the Project; provided, that the threshold for what constitutes unreasonable traffic shall be lower after 10:00 p.m. and before 7:00 a.m.
- 8.4 **Unsightly Work, Hobbies or Unkempt Conditions.** The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.
- 8.5 **Garbage, Refuse and Debris.** Each Owner and Resident shall regularly remove from the Unit owned or occupied by such Owner or Resident all rubbish, trash, refuse, waste, dust, debris, and garbage. All containers for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be stored out of the view of the general public provided, however, that such containers may appropriately be placed for collection not more than twenty-four (24) hours prior to any scheduled collection date and shall be

removed from the view of the general public within a reasonable time (not to exceed 24 hours) after being emptied.

- 8.6 **Subdivision of a Unit.** No Unit shall be subdivided or partitioned.
- 8.7 **Temporary Structures.** No Owner or resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board, with consent may be withheld in the Board's sole discretion. Anything to the contrary notwithstanding and until the expiration of the Declarant Control Period, Declarant may install and use temporary structures in the construction and development of the Project and the marketing of Units.
- 8.8 **Landscaping.** No Owner shall install any landscaping on any portion of the Common Elements without the prior written consent of the Board of Directors, which consent may be withheld in the Board's sole discretion. The Declarant shall install landscaping in the Common Elements, and such landscaping shall be maintained by the Association.
- 8.9 **Exterior Alteration.** No Owner shall make any alterations or modifications to the exterior of any Buildings, fences, railings, or walls situated within the Project without the prior written consent of the Board, which consent may be withheld in the Board's sole discretion.
- 8.10 **Business Use.** No business or other commercial activity may be conducted in or from any Unit unless: (a) the existence or operation of the business or commercial activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business or commercial activity conforms to all zoning requirements for the Project and is properly licensed; (c) the business or commercial activity does not involve customers or clients coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business or commercial activity is consistent with the residential character of the 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. Notwithstanding the foregoing, the leasing of a Unit in compliance with applicable provisions of the Governing Documents shall not be considered a business or commercial activity.
- 8.11 **Parking and Vehicles.** No vehicles, trailers, or other equipment shall be parked or stored on the Common Elements within the Project, except in designated parking stalls. No inoperative or unlicensed vehicle shall be parked or stored on any portion of the Project. No recreational vehicles, including without limitation motor homes, tractors, golf carts, mobile homes or trailers (either with or without wheels), campers, camper trailers, boats or other watercraft, and boat trailers shall be parked or stored in the Project except enclosed within a garage. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Common Area in the Project, except that these restrictions shall not apply to emergency repairs. The Board may promulgate further Rules and Regulations regulating parking and provide for enforcement of parking restrictions in the Project.

8.12 **Windows and Window Coverings.** No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover any exterior window of any Unit. Sun shades and tinted windows are allowed.

8.13 **Animals.**

- (a) No animals, livestock, birds, insects, or poultry of any kind (each, an “**animal**” and collectively, “**animals**”) shall be raised or bred on any portion of the Project.
- (b) Not more than two domesticated dogs and/or cats or other small household pets may be kept in any Unit. Reptiles are not permitted. No animal of any kind shall be kept in any Unit for any commercial purpose.
- (c) The keeping of animals and their ingress and egress to the Common Elements shall be subject to such Rules and Regulations as may be adopted by the Board. All animals kept within the Project shall be licensed and inoculated as required by law. All animals shall be on a leash at all times when outside a Unit. No animal shall be permitted on any portion of the Common Elements except for orderly domestic animals on a leash and accompanied by a person who can control the animal, and the owner of an animal shall immediately remove droppings left upon the Common Elements or any other portion of the Project by the animal.
- (d) If the owner of any animal fails to comply with the requirements of this Section or any Rules and Regulations applicable to pets, the Board of Directors may, after notice and an opportunity for a hearing in accordance with Section 12.7, bar such animal from use of or travel upon the Common Elements and may impose fines or costs in accordance with Section 12.5. In addition, if an animal’s owner does not remove droppings left by the animal on the Common Elements, or if an animal endangers the health or welfare of any Owner or Resident or creates a nuisance (*e.g.*, unreasonable barking, howling, whining or scratching) or an unreasonable disturbance, all as may be determined in the sole discretion of the Board, then the animal may be permanently removed from the Project upon fourteen (14) days prior written notice to the Owner from the Association. An Owner or Resident who receives such a notice may, within such fourteen (14) day period, request a hearing in accordance with Section 12.7, in which event such Owner or Resident may keep the animal in the Project until such hearing has been held and a determination made by the Board, except that if an animal presents a foreseeable danger to persons in the Project, the Board may require the animal to be removed before the hearing.
- (e) Any Owner or Resident who keeps an animal within the Project shall be deemed to have indemnified and agreed to hold harmless the Association, each other Owner and Resident, and the Declarant from and against any loss, claim, or liability of any kind or character arising out of or resulting from the keeping of such animal within the Project.

- (f) Nothing contained in this Section shall prohibit the keeping within the Project of any assistance animal or any other animal if such prohibition would constitute a violation of the Fair Housing Act or any similar law. The Board may promulgate Rules and Regulations regarding assistance animals consistent with applicable law.
- 8.14 **Insurance.** Nothing shall be done or kept in, on or about any Unit or the Common Elements which may result in the cancellation of any insurance on the Project or an increase in the rate of the insurance on the Common Elements over what the Board of Directors, but for such activity, would pay.
- 8.15 **Laws.** Nothing shall be done or kept in, on or about any Unit or Common Elements, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- 8.16 **Damage or Waste.** No Owner, Resident, or Guest shall cause damage or waste to or on the Common Elements, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or Resident or that Owner's or Resident's Guest.
- 8.17 **Mail Boxes.** Mail boxes shall be installed by Declarant. Any replacement mail boxes must be approved in writing by the Board prior to installation.

ARTICLE IX INSURANCE

- 9.1 **Insurance.** The Association shall obtain insurance as required in this Declaration and as required by the Act. In addition, the Association may, as the Board considers appropriate, obtain additional types of insurance, or greater coverage, than the insurance and coverages required below.
- (a) **Property Insurance.** The Association shall obtain and maintain at all times blanket property insurance or guaranteed replacement cost insurance on the physical structures in the Property, including the Common Elements and the Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, with total coverage not less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding only items normally excluded from property insurance policies. Such property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Unit or to a Limited Common Element, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Element. Each Owner shall be an insured person under such property insurance policy.

- (b) **Liability Insurance.** The Association shall obtain and maintain at all times liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, in an amount determined by the Board but not less than Two Million Dollars (\$2,000,000.00) for any single occurrence. Each Owner shall be an insured person under such liability insurance policy, but only for liability arising from (i) the Owner's ownership interest in the Common Elements; (ii) maintenance, repair, or replacement of Common Elements; and (iii) the Owner's membership in the Association.
- (c) **Flood Insurance.** If any part of the Property 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 Property located within the Special Flood Hazard Area, 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 Property located within a designated flood hazard areas; (ii) one hundred percent (100%) of the insurable value of the Property, or (iii) the amount which meets the then existing FHLMC/FNMA flood insurance requirements for similar condominium projects.
- (d) **Directors and Officers Insurance; Theft and Embezzlement Insurance.** The Association shall obtain (i) 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 Governing Documents, and/or breach of contract, and (ii) insurance covering the theft or embezzlement of funds from the Association.
- (e) Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium development projects established by FNMA and Government National Mortgage Association, so long as either is a mortgagee or owner of a Condominium Unit within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA or Government National Mortgage Association.
- (f) Coverage may not be cancelled or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to any and all insured parties, including any Mortgage Servicer on behalf of FNMA or FHLMC, and any Mortgagee.

9.2 **Waiver of Subrogation against Owners and Association.** All property and liability policies shall contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

9.3 **Loss; Deductibles.**

- (a) 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, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.
- (b) An Owner that has suffered damage 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 the Unit Damage ("**Unit Damage Percentage**") for that Unit to the amount of the deductible under the Association's property insurance policy.
- (c) 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 Element appurtenant to the Unit, the Association may levy an Individual Assessment against the Owner for that amount.
- (d) The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (e) 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.
- (f) The Association shall provide notice to each Owner of the Owner's obligation under this Section 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 deductible, the Association is responsible for the portion of the deductible that the Association could have assessed to the Unit Owner under Subsection 57-8-43(9)(g) of the Act, but only to the extent that the Unit Owner does not have insurance coverage that would otherwise apply under Subsection 57-8-43(9) of the Act. However, if the Association provides notice of the Association's policy deductible as required under Subsection [\(9\)\(i\)\(i\)](#) of the Act, but fails to provide notice of a later increase in the

amount of the deductible, is responsible only for the amount of the increase for which notice was not provided. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- (g) The Association shall notify the Mortgage Servicer at Servicer's address whenever (a) damage to a Unit covered by a mortgage owned by FNMA or FHLMC exceeds \$1,000, and/or (b) damage to Common Areas and related facilities exceeds \$10,000.

9.4 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the Undivided Interests, the Board shall hire and appoint an insurance trustee with whom the Association shall enter into an insurance trust agreement (an "**Insurance Trustee**"), for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

9.5 **Association's Right to Negotiate Claims and Losses 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 an Owner.

9.6 **Amendments to this Section to Comply with Applicable Law.** These insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Association. Notwithstanding anything contrary in this Declaration, the Board may unilaterally, without approval of the Owners, amend this Article to comply with future changes to applicable law.

ARTICLE X DESTRUCTION; CONDEMNATION; RESTORATION

10.1 **Definitions.** As used herein, each of the following terms shall have the meaning indicated:

- (a) “**Available Funds**” means any proceeds of insurance, Condemnation awards, payments in lieu of Condemnation and other uncommitted funds held by the Board, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Board, including a Mortgagee, or that portion of any Condemnation award or payment in lieu of Condemnation payable to an Owner or its Mortgagee for the Condemnation of the Condominium Unit in which it is interested.
- (b) “**Condemnation**” means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.
- (c) “**Estimated Cost of Restoration**” means the estimated cost of Restoration as determined by the Board in its sole discretion.
- (d) “**Restoration**” means restoration of the Property to the extent reasonably possible in accordance with this Declaration, the Plat and the original plans and specifications for the Property and to substantially the same condition in which the Property existed prior to the damage or destruction concerned, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, and to the extent not so possible, “Restoration” means restoration of the Property to an attractive, sound and desirable condition. Any Restoration not in accordance with this Declaration, the Plat and the original plans and specifications for the Project shall require the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees.
- (e) “**Restored Value**” means the value of the Property after Restoration.
- (f) “**Substantial Condemnation**” means the occurrence of: (a) the Condemnation of all of the Property; or (b) the Condemnation of part of the Property where the Estimated Costs of Restoration is 75% or more of the estimated Restored Value of the Property. “**Partial Condemnation**” means the occurrence of any Condemnation which is not a Substantial Condemnation.
- (g) “**Substantial Destruction**” means the occurrence of any damage or destruction of the Property where the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. “**Partial Destruction**” means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

10.2 **Board Determinations.** On the occurrence of any Condemnation of, or damage or destruction to, the Property, the Board shall make a determination as to whether the

Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. In making such determinations the Board may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

- 10.3 **Restoration.** Restoration of the Property shall be undertaken by the Board promptly without a vote of the Owners on the occurrence of Partial Condemnation or Partial Destruction, and shall also be undertaken on the occurrence of Substantial Condemnation or Substantial Destruction unless the election to not undertake Restoration is consented to by a Two-Thirds Majority of the Owners and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees. Within 30 days after the Board has determined that Substantial Condemnation or Substantial Destruction has occurred, it shall send to each Owner and Eligible Mortgagee a written description of the Condemnation or the damage or destruction involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. If Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Board exceed the cost of Restoration when Restoration is undertaken, then the excess shall be paid and distributed to the Owners in proportion to their respective Undivided Interests or, in the discretion of the Board, shall be held to defray future Common Expenses. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, then all of the Units shall be assessed for the deficiency on the basis of their respective Undivided Interests. If all or any portion of one or more Units is damaged or destroyed but is not the subject of Restoration (even through the Property will continue as a condominium project) or is taken in a Condemnation, then the Undivided Interest of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 10.6 below.
- 10.4 **Sale of Property.** Unless Restoration is accomplished pursuant to Section 10.3, the Property shall be sold following the occurrence of Substantial Condemnation or Substantial Destruction. On such sale, condominium ownership under this Declaration and the Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board to the Owners in proportion to their respective Undivided Interests. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- 10.5 **Authority to Represent Owners.** The Board, as attorney-in-fact for each Owner, shall represent all of the Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their respective interests may appear. The Board, as attorney-in-fact for

each Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

- 10.6 **Reallocation of Interests on Condemnation.** If any Unit is taken by Condemnation, then the Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests. The court shall enter a decree reflecting the reallocation of the Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit taken for its Undivided Interest as well as for its Unit. If any portion of any Unit is taken by Condemnation, then the court shall determine the fair market value of the portion of the Unit not taken, and the Undivided Interest appurtenant to such Unit shall be reduced in proportion to the diminution in the fair market value of such Unit resulting from such Condemnation. The Undivided Interest thus divested from the Owner of such Unit shall be reallocated among such Unit and the other Units in proportion to their respective Undivided Interests, with any Unit partially taken in Condemnation participating in the reallocation on the basis of its Undivided Interest as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of the Undivided Interest so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit partially taken for that portion of its Undivided Interest divested from it and not revested in it as well as for that portion of its Unit taken by Condemnation. If, however, the Condemnation of a portion of any Unit makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the entire Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests, and the remaining portion of such Unit shall thereafter be part of the Common Elements. The court shall enter a decree reflecting the reallocation of Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of such Unit for its entire Undivided Interest and for its entire Unit.
- 10.7 **Allocation of Proceeds upon Partial Condemnation.** If a portion of the Common Elements is taken by Partial Condemnation, then the award for it shall be allocated to the Owners in proportion to their respective Undivided Interests.

ARTICLE XI MORTGAGEE PROTECTION

- 11.1 **Eligible Mortgagee.** Upon written request to the Association by a Mortgagee (which request identifies the name and address of such holder and the Unit number or address of the property encumbered by the Mortgage held by such Mortgagee), such Mortgagee shall be deemed thereafter to be an “Eligible Mortgagee” included on the appropriate lists

maintained by the Association, and shall be entitled to timely written notice of any of the following:

- (a) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held by such Eligible Mortgagee.
- (b) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held by such Eligible Mortgagee, which delinquency remains uncured for a period of sixty (60) days.
- (c) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

11.2 Matters Requiring Prior Eligible Mortgagee Approval.

- (a) The prior written consent of not less than fifty-one percent (51%) of Eligible Mortgagees shall be required to:
 - (i) amend any material provision of this Declaration which changes the allocation of responsibility for maintenance and repairs, changes the amounts and other requirements of insurance or fidelity bonds required hereunder or reallocates the responsibility for obtaining such insurance, places additional restrictions on the rights to use the Common Elements, or expressly benefits Mortgagees;
 - (ii) amend this Declaration to add any provision which would impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Unit; or
 - (iii) terminate this Declaration.
- (b) Any addition or amendment shall not be considered material if it is for clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee shall be mailed, postage prepaid, to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Association a negative response to the notice of the proposed amendment within sixty (60) days from the date of such mailing shall be deemed to have approved the proposal.

11.3 **Availability of Governing Documents and Financial Statements.** The Association shall maintain and have current copies of the Governing Documents as well as its own books,

records, and financial statements available for inspection, upon reasonable notice and at reasonable hours, by any Eligible Mortgagee.

- 11.4 **Priority of Declaration; Subordination of Lien.** Any Mortgage or other encumbrance of any Unit shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding the foregoing, the lien or claim against a Unit for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a first or second Mortgage affecting such Unit if the first or second Mortgage was recorded before the unpaid Assessment was due, and the Mortgagee thereunder which obtains title to the Unit shall take title free of such lien or claim for unpaid Assessment or charges which accrue prior to foreclosure of the first or second Mortgage by judicial proceedings or power of sale, or taking of a deed in lieu of foreclosure.

ARTICLE XII ENFORCEMENT; DISPUTE RESOLUTION

12.1 **Agreement to Encourage Resolution of Disputes without Litigation.**

- (a) Declarant, the Association, and all Owners and Residents (each, a “**Bound Party**”) agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (as defined below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Section in a good faith effort to resolve such Claim.
- (b) As used in this Section, “Claim” means any claim, grievance, or dispute arising out of or relating to:
- (i) the interpretation, application, or enforcement of the Governing Documents;
 - (ii) the rights, obligation, and duties of any Bound Party under the Governing Documents;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2 below:

- (1) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (2) any suit by the Association against one or more Owners to obtain injunctive relief;

- (3) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (4) any suit in which any indispensable party is not a Bound Party; and
- (5) any suit as to which any applicable statute of limitations would expire within 180 days after the giving of Notice required by Section 12.2 below.

12.2 **Dispute Resolution Procedures.**

- (a) Notice. The Bound Party asserting a Claim (the “Claimant”) against another Bound Party (the “Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:
 - (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;
 - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises;
 - (iii) the Claimant’s proposed resolution or remedy; and
 - (iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
- (b) Negotiation. The Claimant and the Respondent shall make good faith efforts to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days after the date of the Notice (or within such other period as the parties may agree), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Grand County area. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the Claim to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the

mediation proceedings indicating that the parties are at an impasse and the date the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

- (d) Settlement. Any settlement of a Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportion) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.
- (e) Initiation of Litigation by the Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceedings unless first approved by a vote of not less than sixty percent (60%) of the Eligible Votes cast at an annual or special meeting of the Association; except that no such approval shall be required for actions or proceedings:
 - (i) initiated during the Declarant Control Period;
 - (ii) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;
 - (iii) initiated to challenge property tax or condemnation proceedings;
 - (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
 - (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

12.3 Enforcement and Right to Recover Attorney's Fees and Costs. Subject to the provisions of Section 12.2 above, the Association, or any Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Governing Documents. Should the Association or any Owner take action to enforce the Governing Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, the prevailing party in such action may recover all costs incurred in such action, including reasonable attorney's fees. Failure by the Association or any Owner to enforce any provision of this Declaration or the other Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. The

provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in any other Section of this Declaration.

12.4 Self Help Rights of Association.

- (a) If an Owner fails properly to perform such Owner's maintenance responsibilities or otherwise fails to comply with any provision of this Declaration, the Association may perform the required maintenance or perform the obligation or otherwise take steps to abate the violation and assess its costs against the Unit and the Owner as an Individual Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.
- (b) If an emergency exists in which failure to act could endanger life or property, the Association may without prior notice to an Owner enter onto or into a Unit and take such action as may be necessary to abate the emergency. If the emergency was caused by or attributable to the negligence or misconduct of the Owner, the costs incurred by the Association in correcting the emergency shall be assessed to the Owner as an Individual Assessment.
- (c) The Association may cause to be towed any vehicle which is in violation of parking or other restrictions contained in the Governing Documents, and the owner of the vehicle will be responsible for the towing costs and the costs of any storage of the vehicle after towing.

12.5 Fines.

- (a) The Board may assess fines against an Owner, in accordance with this Section 12.5, for a violation of the Governing Documents by the Owner or its tenants or Guests.
- (b) If an Owner, Resident, or Guest commits a material violation of the Governing Documents other than a failure to pay an Assessment, then, prior to disciplinary action resulting from such violation, the Board shall provide to the Owner of the applicable Unit written notice (a "Violation Notice") (i) describing the violation and identifying the provision of the Governing Documents violated; (ii) stating that the Board will assess a fine or fines against the Owner if a continuing violation is not cured or if the Owner or its tenants or Guests commit violations of the same provision within one year after the date of the Violation Notice; and (iii) if the violation is a continuing violation, stating a time by which the Owner shall cure the violation, which time shall be not less than 48 hours after the date on which the Violation Notice is given to the Owner.
- (c) The Board may assess a fine against an Owner if (i) within one year after the day on which the Board gives an Owner a Violation Notice, the Owner commits another violation of the same rule or provision identified in the Violation Notice, or for a

continuing violation, the Owner does not cure the violation within the time period that is stated in the Violation Notice.

- (d) After the Board assesses a fine against an Owner under this Section 12.5, the Board may, without further warning and with no right to another hearing, assess an additional fine against the Owner each time the Owner or its tenants or Guests commit a violation of the same rule or provision within one year after the day on which the Board assesses a fine for a violation of the same rule or provision; or allows a violation to continue for ten days or longer after the day on which the Board assesses the fine.
- (e) A fine assessed under this Section 12.5 shall be in the amount provided for in the Rules and Regulations, not to exceed the amount allowed by any applicable law and shall constitute an Individual Assessment against the Owner.

12.6 Suspension of Use Rights. The Board may suspend the voting rights of an Owner who is in violation of any provision of the Governing Documents, and/or suspend the rights of an Owner who is in violation of any provision of the Governing Documents for that Owner and its tenants or Guests to use any recreational portions of the Common Elements; provided, however, that the right of an Owner or its tenants or Guests to access such Owner's Unit shall not be suspended or denied.

12.7 Notice and Hearing.

- (a) An Owner who is assessed a fine may request an informal hearing before the Board to dispute the disciplinary action within thirty days after the day on which the Owner receives notice of the disciplinary action. If a hearing is requested within the time period provided for herein, then a hearing shall be scheduled by the Board and conducted in compliance with procedures included in the Rules and Regulations and with any applicable law.
- (b) The determination of the Board of Directors after a hearing held in accordance with this Section 12.7 shall be final, subject to any rights of appeal provided under applicable law.
- (c) Nothing herein shall be construed to prevent the Board of Directors from exercising the self-help rights of the Association under Section 12.4 above, and no hearing shall be required in connection with the exercise of such rights.

12.8 Declarant's Rights.

- (a) All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. All references in this Declaration to Declarant shall include any successor to Declarant, either by operation of law or through specific assignments of rights under the Declaration.

- (b) Anything in this Declaration to the contrary notwithstanding, during the Declarant Control Period:
 - (i) Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Condominium Unit or any portions thereof. Recordation of such an amendment shall be deemed conclusive proof of the institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Property and all persons having an interest therein.
 - (ii) This Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant may unilaterally amend or terminate this Declaration prior to the closing of a sale by Declarant of any Unit.

12.9 Initial Development and Construction.

- (a) As used in this Section, the following terms shall have the meanings given them below:
 - “Contractor” shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Declarant.
 - “Design Professional” shall mean any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Declarant.
 - “Initial Construction” shall mean the design and construction of the Improvements, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this Declaration.
 - “Substantial Completion” shall mean the stage in the progress of the Initial Construction when the Initial Construction or designated portion thereof is sufficiently complete so that it can be put to its intended use.
- (b) In all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party

licensed in the State of Utah in the same profession, area of practice, or construction trade as each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association's alleged damages and the factual basis for each such opinion. The Association's failure to file the affidavit in accordance with this Section 12.9 shall result in dismissal with prejudice of any claim described in this Section 12.9 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the allegations of the Complaint.

- (c) The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any design consultants of a Design Professional, or any subcontractors of a Contractor not more than four (4) years after the respective date of Substantial Completion of each portion of the Initial Construction for which the claim or cause of action is made. The Association waives all claims and causes of action not commenced in accordance with this section.
- (d) During the four (4) years following the date of Substantial Completion of the Initial Construction, the Association shall schedule an annual walkthrough of all Common Elements with the Association's maintenance personnel and a representative of Declarant for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to Declarant, which time and date shall be during normal business hours. The Association shall conduct each walkthrough and keep a record of the items identified regardless of any lack of participation by Declarant.
- (e) As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Construction to Declarant, all Design Professionals, and all Contractors within thirty (30) days of first discovering the alleged defect, and Declarant and each Design Professional and Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association's failure to provide notice shall result in dismissal with prejudice of any claim and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect.

- (f) To the extent damages are covered by insurance, the Association waives all rights against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.
- (g) The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor.
- (h) A vote in favor of at least 75% of the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor.

ARTICLE XIII MISCELLANEOUS.

- 13.1 **Amendment.** This Declaration and/or the Plat may be amended only by a vote of at least sixty-seven percent (67%) of the Total Votes and, if required pursuant to this Declaration, the consent of the required percentage of Eligible Mortgagees. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the required vote for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.
- 13.2 **Sale of Property.** The Owners may, by an affirmative vote of a Super Majority (75%) of the Owners, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Notwithstanding the foregoing, sale of the Property in the event of damage, destruction, or condemnation shall be governed by the provisions of Section 10.4 above.
- 13.3 **Declarant's Right to Amend.** Notwithstanding anything to the contrary herein, the Declarant reserves the right to amend this Declaration without the consent of any other Owners or any Eligible Mortgagee during the Declarant Control Period (i) if such amendment is necessary to bring this Declaration into compliance with any rule, regulation or requirement of the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any similar federal agency, or any local government having jurisdiction over the Project, or (ii) to make corrective changes.

- 13.4 **Limitation on Improvements by Association.** During the Declarant Control Period, neither the Association nor any Owner shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Elements created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.
- 13.5 **Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units in the Project then owned by Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.
- 13.6 **Transfer of Management.** Anything to the contrary notwithstanding, Declarant may at any time elect to relinquish its reserved right to select the Board of Directors and transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transition Date") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Board of Directors to take office as of the Transition Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management.
- 13.7 **Certain Provisions Applicable to Declarant.** Notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligation of an Owner to pay Assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.
- (a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.
 - (b) No amendment may be made to the Declaration without the vote and approval of 80% of the Owners during the Declarant Control Period.
- 13.8 **Interpretation.** The captions which precede the Articles and Sections of the Governing Documents are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The unenforceability or invalidity of any portion of the Governing Documents shall not affect the validity or enforceability of the remainder hereof.

- 13.9 **Covenants to Run with Land.** Unless terminated as provided herein, this Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. All Owners, Residents, and Guests shall comply with, and all interests in all Units shall be subject to, the terms of the Governing Documents and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, every provision of the Governing Documents.
- 13.10 **Security.** The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association nor the Board of Directors shall in any way be considered insurers or guarantors of security within the Project, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, Residents, and Guests, where applicable, acknowledge by taking occupancy of a Unit or entering the Project that neither the Association nor the Board of Directors represents or warrants that any security measures undertaken will ensure their safety, and further acknowledge that neither the Association nor the Board of Directors are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither the Association nor the Board of Directors has made any representations or warranties, nor has such Owner, Resident, or Guest relied upon any representations or warranties, expressed or implied, regarding security in the Project.
- 13.11 **Effective Date.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being recorded in the office of the County Recorder of Grand County, Utah.

[Signature Page Follows]

EXECUTED as of the day and year indicated in the Notary acknowledgment below. .

DECLARANT:

KANE DEVCO, LLC,
a Utah limited liability company

By _____
Name:
Title:

STATE OF UTAH)
 :SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 2021, by _____, _____ of
Kane Devco, LLC, a Utah limited liability company.

Notary Public

EXHIBIT A
to
Declaration of Covenants, Conditions, and Restrictions
for
Kane Creek Condominiums

[Attach Project legal description]

EXHIBIT A-1
to
Declaration of Covenants, Conditions, and Restrictions
for
Kane Creek Condominiums

[Attach legal description of Expanable Land]

EXHIBIT A-2
to
Declaration of Covenants, Conditions, and Restrictions
for
Kane Creek Condominiums

[Attach legal description of Convertible Land]

EXHIBIT B
to
Declaration of Covenants, Conditions, and Restrictions
for
Kane Creek Condominiums

[Attach Plat]

EXHIBIT C
To
Declaration of Covenants, Conditions, and Restrictions
For
Kane Creek Condominiums

[Description of Undivided Interests and Voting Rights]

Each Unit possesses an equal Undivided Interest in the Common Areas and Facilities, which Undivided Interest shall be for all purposes, including voting. Each Unit shall have one (1) vote. The Total Votes in the Association shall be equal to the number of Units constructed in the Project.

EXHIBIT D
to Declaration of Covenants, Conditions, and Restrictions
for Kane Creek Condominiums

[Attach Bylaws]

