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**DECLARATION**  
**OF**  
**CONDOMINIUM**  
**FOR**  
**1600 PARK AVENUE**  
**CONDOMINIUM "C"**

July, 2021

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**DECLARATION  
OF  
CONDOMINIUM  
FOR  
1600 PARK AVENUE  
CONDOMINIUM “C”**

This Declaration of Condominium for 1600 Park Avenue Condominium “C” (“Declaration”) is made and executed by Sierra Homebuilders, LLC, a Utah limited liability company (“Declarant”), for itself, its successors, grantees and assigns, pursuant to the Condominium Ownership Act of the State of Utah.

**RECITALS**

- A. Name of Project and Description of Land.** The Units and Common Areas created on the real property that is subject to this Declaration are also subject to the 1600 Park Avenue Master Declaration (“Master Declaration”). The 1600 Park Avenue Condominium “C” Association (“Association”) is a Sub-Association of the 1600 Park Avenue Master Association (“Master Association”). The Units and Common Areas herein are situated in and upon that certain real property (“Subject Land”) located in Cache County, State of Utah, as specifically described in Exhibit “A” attached hereto and incorporated herein by this reference. Declarant has prepared and has recorded in the office of the County Recorder for Cache County, State of Utah, a plat for 1600 Park Avenue Condominium “C” (“Plat”; see Exhibit “B” attached). The Association, along with the Master Association, has responsibility to manage the Common Areas in accordance with the provisions set forth in this Declaration and in the Master Declaration. There are thirty-two (32) Units in the Association. The Subject Land is part of a larger overall development known as 1600 Park Avenue. When completed, the Master Community may contain up to 106 Lots and Condominium Units which will be developed in multiple phases. The Master Community development and all the Lots and Units within the development shall collectively be referred to herein as the “Master Community”. The Units and Common Areas within the Subject Land may also be referred to as the “Project.”
- B. Name of Association and Bylaws.** The name of the Association shall be 1600 Park Avenue Condominium “C” Association, which has been created as a Utah nonprofit corporation by filing articles of incorporation with the Utah Division of Corporations and Commercial Code. The Association is the governing body of 1600 Park Avenue Condominium “C” Association and is to be operated in accordance with this Declaration, the Articles of Incorporation for 1600 Park Avenue Condominium “C” Association, the Bylaws of 1600 Park Avenue Condominium “C” Association, and the Master Declaration and Bylaws. The Association Bylaws are attached hereto as Exhibit “C”.

- C. **Master Association.** 1600 Park Avenue Condominium "C" Association is part of a larger Master Community development known as 1600 Park Avenue, situated in Cache County, State of Utah. All Lots, Units and Common Areas within the Master Community will be governed by the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the 1600 Park Avenue Master Association ("Master Declaration"). The Master Declaration has already been recorded against the Project. All Units within the Project shall be part of both the Association and the Master Association.
- D. **Condominium Act.** 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 the 1600 Park Avenue Condominium "C".
- E. **Intent and Purpose.** Declarant, by recording this Declaration, does so for the purpose of imposing upon the Subject Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Units within the Association and the Owners thereof.
- F. **Authority to Amend.** Inasmuch as no Units have been conveyed by Declarant as of the date of this Declaration is recorded, and as Declarant is the sole owner of Units and common area in the Project, Declarant authorizes this Declaration to be recorded.

**NOW, THEREFORE,** for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this project which, pursuant to the provisions of the Condominiums Ownership Act of the State of Utah, shall be enforceable equitable servitudes, where reasonable, and shall run with the land:

#### **ARTICLE I DEFINITIONS**

When used in this Declaration or in the Bylaws which are made a part of this Declaration and are attached hereto as Exhibit "C", the following terms shall have the meaning indicated. If there is any conflict between these definitions and the definitions contained in the Master Declaration, the definitions shall be read together in harmony to the extent possible, otherwise, the Master Declaration definitions shall control.

- 1.1 **Act** shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated 1953, Section 57-8-1, et. seq., as the same may be amended from time to time.
- 1.2 **Additional Property** shall mean any of the real property contained within the Master Community known as 1600 Park Avenue, or referred to in the Master Declaration and upon which additional Sub-Associations may be constructed and which will be part of the Master Association. At no time shall any of the Lots or Units built on the Additional Property be deemed to be part of the Master Association until such portion of the Additional Property has been duly annexed in the Master Association and a supplemental declaration and amended plat or additional plat have been duly recorded.
- 1.3 **Articles of Incorporation** shall mean the Articles of Incorporation of 1600 Park Avenue

Condominium "C" Association, as such Articles may be amended from time to time.

- 1.4 **Association** shall mean the 1600 Park Avenue Condominium "C" Association, a Utah nonprofit corporation, organized to serve and act as the governing body of the Project.
- 1.5 **Board of Directors** or **Board** shall mean the Board of Directors of the Association.
- 1.6 **Bylaws** shall mean the Association's bylaws attached hereto as Exhibit "C" and as amended from time to time.
- 1.7 **Common Areas** or **Common Area** shall mean and refer to:
- (a) The common area identified on the Plat as "Common Area," and shall include the areas identified as "Limited Common Areas," together with all equipment, facilities, fixtures, and other personal property and real property improvements located in the Common Areas and/or owned by the Association for the use and benefit of all Owners, each Owner possessing an undivided interest in the Common Areas.
  - (b) That portion of the Property not specifically included in the respective Units as herein defined;
  - (c) All foundation, columns, girders, beams, supports, mainsails, roofs, exterior walkways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;
  - (d) Notwithstanding the forgoing, if any of the areas listed in subparagraphs (a), (b) or (c) are part of the Master Association's Common Area, those areas shall not be part of the Association's Common Area.
- 1.8 **Common Expense** shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Association's Common Area or the Master Association's Common Area (including any special assessments), and including those fees not paid by the Owner responsible for payment; costs of management and administration of the Association and the Master Association, including, but not limited to, accountants, bookkeepers, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefitting the Common Area; the costs of any casualty or liability insurance covering the Project and the Master Community; and the cost of insuring the Directors of the Association and Master Association; any taxes paid by the Association; amounts paid by the Association or Master Association for discharge of any lien or encumbrance levied against the Project, or portion thereof; and the cost of any other expense incurred by the Association or Master Association for any reason whatsoever in connection with the Project, for the benefit of all of the Owners.
- 1.9 **Common Expense Fund** shall mean either the Association's or the Master Association's

fund created or to be created and into which all funds of the Association shall be deposited and used to pay common expenses.

- 1.10 **Condominium** shall mean and refer to the ownership of a single Unit in this Project together with an undivided interest in the Common Areas and Facilities of the Property.
- 1.11 **Declarant** shall mean Sierra Homebuilders, LLC, a Utah limited liability company, which has made and executed this Declaration, and 'or its successor which, by either operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Project as did its predecessor.
- 1.12 **Declaration** shall mean this document, governing the affairs of the Association.
- 1.13 **Dwelling** shall mean and refer to each physically constructed residential Unit or building containing a single family residence. Within the Project, a Dwelling and a Unit shall be the same thing. Within the Master Community there may be Dwellings in some Sub-Associations that are not also Units, as defined herein.
- 1.14 **Limited Common Areas** shall mean those portions of the Project within the Common Area that are reserved for the exclusively use by the Owner of the Unit appurtenant to the Common Area. Limited Common Areas shall include (a) balconies; (b) patios, and (c) carports which shall be assigned to Units by the Declarant. Maintenance, repair and replacement of the Limited Common Areas are set forth in the Maintenance Chart attached as Exhibit "D".
- 1.15 **Lot** shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 1.16 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association or Master Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.17 **Master Association** shall mean the 1600 Park Avenue Master Association as set forth in the Master Declaration, and which is charged with and responsible to manage and maintain Lots, Common Areas and Limited Common Areas according to the provisions herein and as set forth in Exhibit "D", as well as portions of Lots, Units, Common Areas and Limited and Common Areas in the Association in each Sub-Association.
- 1.18 **Master Association Maintenance Areas or Maintenance Areas** shall mean those portions of the real property within the Subject Land and the Master Community that are maintained by the Master Association, including but not limited to snow removal and parking lot maintenance, and may include exterior maintenance of Dwellings according to the Maintenance Chart attached hereto as Exhibit "D".
- 1.19 **Master Declaration** shall mean that document and those documents recorded against the Subject Land or the Additional Property in the Cache County Recorders Office governing

the affairs of the Master Association and the Association. The Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easement for 1600 Park Avenue was recorded in the office of the Cache County Recorder on August 27, 2019, as entry number 1225845.

- 1.20 **Master Community** shall mean that development known as 1600 Park Avenue and all the Lots, Units, Common Areas and Additional Property that are platted as part of and included within 1600 Park Avenue. A map of the projected 1600 Park Avenue development is attached hereto as Exhibit "E". Declarant makes no representations that the layout and configuration of the buildings, Lots and Units set forth on Exhibit "E" accurately represent the location, type, or number of buildings, Lots and Units that may be constructed within the Project. This map may be amended, changed and modified by Declarant and represents what the Declarant hopes to build, but no representation is made that the Declarant can or will build 1600 Park Avenue as depicted on the map, which Declarant may modify at any time and in any manner.
- 1.21 **Member** shall mean a member of the Association and shall include all Owners. A member of the Association shall also be a member of the Master Association.
- 1.22 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.
- 1.23 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.
- 1.24 **Owner** shall mean any person or entity or combination thereof, including the Declarant, owning fee title to a Unit within the Project as shown on the records of Cache County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Unit under contract until such contract is fully performed and legal title conveyed.
- 1.25 **Percentage Interest** shall mean that figure set forth on Exhibit "F", attached, expressed as a percentage of ownership by Unit Owners in the Common Areas of the Project and shall be for all purposes, including voting and assessments. Common Expenses shall be allocated among the Unit Owners in accordance therewith. The percentage of ownership in the Common Areas shall be as set forth in Exhibit "F". Voting rights in the Association are held solely in connection with the Ownership of a Unit. Owners shall pay their Percentage Interest of Common Expenses as set forth in this Declaration and according to Article IX of the Master Declaration. The aggregate Percentage Interest of ownership in the Common Areas shall equal 100 percent. The Percentage Interest set forth in Exhibit "F" shall be amended by Declarant by filing supplement amendments to the Declaration and Master Declaration and without vote or further authorization from Owners, upon adding or removing Additional Property in the Master Community, or upon modifying or amending the Plat recorded against the Subject Land.
- 1.26 **Period of Administrative Control** shall end (a) ten (10) years from the date of recordation

of this Declaration; or (b) the date Declarant provides written notice to the Association that the Project is completed and no further Units or Dwellings will be developed and no Additional Property will be added to the Master Association, which ever is sooner.

- 1.27 **Plat** shall mean the plat for 1600 Park Avenue Condominium "C", as recorded in the office of the County Recorder for Cache County, State of Utah, and any amendment thereto, a copy of which is attached hereto as Exhibit "B".
- 1.28 **Project or Condominium Project** shall mean and refer to the entire Property consisting of thirty-two Units and Common Area, as further defined hereinafter, together with all rights, obligations and organizations established by this Declaration.
- 1.29 **Sub-Association** shall mean any and all associations within the Master Community subject to the Master Declaration.
- 1.30 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit "A".
- 1.31 **Total Votes of the Association** shall mean the total number of votes appertaining to the Units in the Project. After Class B membership ceases to exist, all Units shall in allotted the votes in accordance with the Percentage Interest set forth in Exhibit "F".
- 1.32 **Unit** shall mean a separate part of the property intended for any type of independent use, as shown on the Plat that describes the unit boundaries.

Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

## ARTICLE II SUBMISSION TO THE ACT AND DECLARATIONS

- 2.1 Declarant hereby submits the above-described Property, tract of land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to (a) the provisions of the Act as a Condominium Project, (b) this Declaration, and (c) the Master Declaration. This Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provisions of the Act shall apply to the Property.

## ARTICLE III DIVISION OF PROJECT

- 3.1 **Subdivision into Units.** Pursuant to the Plat, the Subject Land is divided into Units as more particularly described on the Plat. The Owner of each Unit, regardless of the size, purchase price or location of the Unit, shall have the right to use the Common Areas and the Common Areas open for access to the public. Upon construction of all Units and buildings in the



Project and termination of the Period of Administrative Control, the Common Area shall be conveyed, transferred and deeded by Declarant, without warranty, to the Association, to be held and administered in accordance with the provisions of this Declaration and the Master Declaration. Until construction of all Units and buildings in the Project and termination of the Period of Administrative Control, the Common Area may be amended, modified, enlarged, reduced and withdrawn from the Project.

- 3.2 **Easements.** The Declarant, its successors and assigns, shall have a transferable easement over, on and across the Common Area for the purpose of doing all things reasonably necessary and proper for the construction, completion, development and sale of the Project.

#### **ARTICLE IV IMPROVEMENTS**

- 4.1 **Description of Improvements.** The Project shall consist of one phase and contain thirty-two (32) Units, as shown on the Plat. The Project may be amended to remove Units as determined by the Declarant.
- 4.2 **Description and Legal Status of Units.** The Plats show or will show the number of each Unit. All Units shall be capable of being independently owned, encumbered, and conveyed.
- 4.3 **Ownership.** Each Unit Owner shall be entitled to vote in accordance with the voting percentages set forth in Exhibit "F".

#### **ARTICLE V NATURE AND INCIDENTS OF OWNERSHIP**

- 5.1 **Master Association Maintenance.** Notwithstanding any other language in this Declaration, all Association duties and responsibilities set forth in this Article V and elsewhere in this Declaration may be assumed and performed by the Master Association as determined solely by the Declarant during the Period of Administrative Control and by the Master Association Board thereafter. It is understood and agreed that Owners in each Sub-Association will be sharing and using driveways and other Common Areas located in another Sub-Associations. Because it is not economical for each Sub-Association to engage separate maintenance, reserve, billing and management services for their separate Common Areas and Units, the maintenance and management services described in this Article V and elsewhere in this Declaration may be performed by the Master Association, even when not otherwise expressly stated herein. Any services performed by the Master Association shall be at the expense of the Association or Sub-Association for which the service was performed.
- 5.2 **Ownership and Maintenance of Units.** The maintenance, replacement and repair of the Common Areas shall be the responsibility of the Association and the Master Association, as set forth in the attached Exhibit "D". The cost thereof shall be a Common Expense. The Unit Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Unit Owner's expense, all portions of the Owner's Unit. The Unit Owners shall keep clean and in a sanitary condition their porch, decks and patios, if any.

Attached as Exhibit "D" is a Maintenance Chart that lists the division of responsibility for maintenance and repair of various portions of the Subject Land between the Association, the Master Association, and the Owners. The provisions of Exhibit "D" govern to the exclusion of any other language contained in this Declaration. However, the Association is only responsible to maintain and repair the items listed on Exhibit "D", and is only responsible to replace and maintain the Common Areas and is not responsible to replace any property or improvements associated with a Dwelling or a Unit unless expressly indicated.

- 5.3 **Sprinkler System.** The Association shall be responsible for the installation, maintenance, repair and replacement of any sprinkler system located on the Common Areas.
- 5.4 **Title.** Title to a Unit within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 5.5 **Prohibition Against Subdivision of Unit.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Unit to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Unit as shown on the Plat.
- 5.6 **Ownership and Use of Common Area.** The Association shall own the Common Areas and shall have the exclusive right and obligation to manage and maintain all Common Areas, and to repair, replace and reconstruct any existing or new Common Areas. The Association shall not be required to maintain any other areas except as expressly set forth herein. Each Owner shall have an irrevocable license and easement to reasonably use, occupy and enjoy all Common Areas used in common with all other Owners, including Common Areas in other Sub-Associations. Except as otherwise provided in this Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Each Owner will be responsible for a share of the insurance, maintenance and other costs and expenses relating to the Common Areas as set forth in Exhibit "F".
- 5.7 **Exclusive Use of Unit.** All Unit improvements are reserved for the exclusive use of the Owner of that Unit and the Owner's invitees and guests. Such areas shall be maintained and repaired at the expense of the Unit Owner as indicated on the attached Exhibit "D".
- 5.8 **Fences and Walls.** The Association shall be responsible for the maintenance, replacement or repair of any fences within the Project. All fences installed by Declarant shall be maintained, repaired and replaced by the Association.
- 5.9 **Inseparability.** Title to any part of a Unit within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Unit, or any part thereof, shall be constructed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as

hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Area in common with all Owners.

- 5.10 **No Partition.** The Common Area shall be owned by the Association in accordance with the provisions of this Declaration and no Owner nor the Association may bring any action for partition thereof except as allowed by law.
- 5.11 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Area or any part thereof. 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.
- 5.12 **No Separate Taxation.** Each Unit and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Area shall be taxed in accordance with the ownership interest possessed by each Unit Owner. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.
- 5.13 **Mechanic's Liens.** No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same.
- 5.14 **Mortgages and Liens on Common Area.** The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Area or any part thereof. No labor performed or material furnished for use in connection with the Common Area shall create any right to file a statement, claim, or notice of mechanic's lien against the Common Area.

## ARTICLE VI ARCHITECTURAL RESTRICTIONS

- 6.1 **Single Family Residence.** All Units in the Project shall be known and described as residential Units.
- 6.2 **Setback Requirements.** All set-back lines, side yards, and back yards shall be in accordance with applicable city ordinances.

## ARTICLE VII EASEMENTS

- 7.1 **Easement for Maintenance.** The Association and Master Association shall have the irrevocable right to have access from time to time to all Units and Common Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Units and Common Areas or to properly maintain those area for which it has responsibility as set forth in Exhibit "D".
- 7.2 **Easements Deemed Created.** All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 7.3 **Easements Reserved by Declarant and Association.** The Association shall have power, without the vote or consent of the Owners or of any other person, to grant and convey to any third party, and Declarant hereby reserves unto itself, easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Units and Common Areas, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project, other Sub-Associations, and other property that may be added to the Project.

## ARTICLE VIII RESTRICTIONS ON USE

- 8.1 **Residential Uses Only.** Each Unit contained in the Project is intended to be used for single family residential housing. However, Units may also be used for business or commercial activity in accordance with City zoning ordinance. Nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Units owned by Declarant as sales models or property management offices, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time.
- 8.2 **No Noxious or Offensive Activity.** No noxious or offensive trade or activity and no nuisance shall be carried on upon any Unit nor shall anything be done which may be or may become an annoyance in the neighborhood. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.
- 8.3 **Smoking.** No Owner, family member of a Owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as "Resident") shall smoke cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, including vaping, anywhere within the Association's

Common Area that is within 25 feet of a Unit. This prohibition shall include but not be limited to Common Areas, enclosed Common Areas within the Project and all porches, patios and parking areas. The term "smoke", "smoking" or "tobacco" as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, vaping, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

- 8.4 **Restriction on Vehicles.** No boats, trailers, recreational vehicles, or inoperable or unregistered or unlicensed vehicles shall be parked or stored in the Common Areas. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof shall be dismantled, rebuilt, serviced, repaired or repainted in the Common Areas.
- 8.5 **Temporary Structure.** No trailer, basement, tent, shed, shack, garage, barn or other out building shall be erected in the Project nor shall it at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- 8.6 **No Obstructions.** There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association
- 8.7 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association and the Master Association, nothing shall be done or kept in or on any Unit, in the Common Area, or in any other part of the Project which may result in cancellation or any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Unit which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Unit or in the Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and the Master Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees, or invitees.
- 8.8 **Garbage Cans and Trash.** Unless otherwise serviced by a garbage dumpster, garbage cans may be placed outside a Unit in the Common Areas designated by the Association and so as not to be a nuisance or health concern. No trash, debris, junk or garbage may be collected, placed or stored on any portion of an Owner's Unit or Limited Common Area.
- 8.9 **Pets.** No more than two (2) domestic pets may be kept on any single Lot or Living Unit. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration, including but not limited to restrictions on the types of pets, requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules

adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or Limited Common Area and shall be leashed or restrained whenever outside a Living Unit. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.

## **ARTICLE IX THE ASSOCIATION**

- 9.1 **Membership.** Each Owner shall be entitled and required to be a Member of the Association and the Master Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. 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 interests and by the same type of tenancy in which title to the Unit is held. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit. An Owner shall be entitled to membership for each Unit owned by said Owner in the Percentage Interest set forth in Exhibit "F" as amended from time to time. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Unit shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. 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. The rights, privileges and obligations relating to membership in the Association shall also apply to each Owner's membership in the Master Association, though voting interests shall be modified as stated herein.
- 9.2 **Voting Rights.** The Association shall have the following-described two classes of voting membership:
- (a) **Class A.** Class A Members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A Members shall each be entitled to the Percentage Interest set forth in Exhibit "F".
  - (b) **Class B.** The Class B Member shall be the Declarant and its assigns or successors, and shall consist of the interest the Declarant has in the existing Lots and Units and the future Lots and Units projected to be constructed in other Sub-Association on the

**Additional Property.** For voting purposes the Class B Member shall be entitled to ten (10) votes for each Lot or Unit owned by Declarant, including ten (10) votes for each of the remaining Lots and Units projected to be built in the Master Community on the Additional Property, which voting interests shall remain (i) until all the Lots and Units created by Declarant are developed and sold, (ii) until the expiration of ten (10) years from the recording of this Declaration, or (iii) until Declarant provides written notification to the Association, whichever is sooner. The Class B Membership shall automatically cease and be converted to a Class A Membership on the first to occur of the following events:

- (i) The date Declarant provides written notice to the Association that the Project is completed and no further Units will be developed and no Additional Property will be added to the Master Community.
- (ii) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Cache County, Utah.

9.3 **Board of Directors.** The Board of Directors shall consist of three (3) members. Declarant reserves the right to appoint all of the Board of Directors until the first of the following occurs:

- (a) Ten (10) years from the date of recordation of this Declaration.
- (b) The date on which one hundred percent (100%) of the Units in the Project have been conveyed to Owners other than Declarant or Declarant's successor in interest.

9.4 **Amplification.** The provisions of this Article IX may be amplified by the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

9.5 **Liability of Board.** The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful and gross: misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability,

officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

**ARTICLE X  
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

- 10.1 **Common Areas.** The Association shall be responsible, as described in herein and subject to the rights and duties of the Owners as set forth in this Declaration, for the exclusive management and control of the Common Areas and all improvements thereon. Except as otherwise provided for in this Declaration, the Association and Master Association shall be responsible for maintenance, repair, and replacement of all improvements or other materials located upon or used in connection with the Common Areas. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.
- 10.2 **Limited Common Area.** The Association, Master Association and Owners shall be responsible for the maintenance of the Limited Common Areas as set forth in Exhibit "D."
- 10.3 **Manager.** The Association and the Master Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association or the Master Association shall be paid for with funds from the Common Expense Fund.
- 10.4 **Rentals and Use of Units.**
- (a) **Single Family.** Units are to be occupied and used for single-family residential purposes by the Owners, their tenants, and social guests, and may be used for commercial purposes as permitted by City ordinance.
- (b) **Nightly Rentals.** Units may not be used for nightly rentals or short-term rentals or any period of time less than six (6) months.
- 10.5 **Miscellaneous Goods and Services.** The Association and the Master Association may obtain and pay for the services of such personnel as the Association and the Master Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or the Master Association or by any person or entity with whom or which it contracts. The Association and the Master Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter. In addition to the foregoing, the Association and the Master Association may acquire and pay for as a Common Expense, insurance, landscaping, some exterior lighting, and other necessary or desirable utility services for the goods and services common to the Units.
- 10.6 **Rules and Regulations.** The Association and the Master Association by action of their



Board of Directors may make reasonable rules and regulations governing the use of the Units and of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association and the Master Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Association is empowered to adopt rules allowing for the termination of utilities upon non-payment of fees, as provided in Utah Code Annotated § 57-8-52 (as amended), to adopt rules for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8-53 (as amended), and to adopt rules allowing the Association to assess a fine against those residents, Owners or tenants who violate the Association's Declaration, bylaws or rules and regulations, which rules shall be consistent with those permitted in Utah Code Annotated § 57-8-37 (as amended). In the event of such action, with or without the filing of a judicial action, the Association and the Master Association shall be entitled to recover its costs, including reasonable attorney fees, from the offending Owner. During the Period of Administrative Control the Declarant is exempt from Association rules and rule making procedures.

- 10.7 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 10.8 **Implied Rights.** The Association and the Master Association may exercise any right or privilege given to it expressly by this Declaration, the Master Declaration, or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.
- 10.9 **Reserves.** Following the Period of Administrative Control, the Association shall maintain an adequate reserve fund for maintenance, repair and replacement of those Common Areas that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article XI below.

#### **ARTICLE XI ASSESSMENTS**

- 11.1 **Agreement to Pay Assessments.** Declarant, for and as the owner of the Project and every part thereof on the date hereof, hereby covenants, and each Owner of a Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other, with the Association and the Master Association, to pay to the Association and the Master Association all assessments, both regular and special, made by the Association and the Master Association for the purposes provided in this Declaration and the Master Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article XI and in the Master Declaration.

- 11.2 **Assessments / Exceptions.** Common Expense assessments shall be computed and assessed against all Units based on the Percentage Interest of each Unit as set forth in Exhibit "F" to this Declaration, and assessed against Owners in the Project and in the Master Association as set forth in the Master Declaration and its amendment as additional phases are added to the Project, which amendments may be recorded at the County from time to time by the Declarant without additional notice to or authorization from Owners as Lots and Units are added to the Additional Property, and subject to the exceptions provided to the Declarant during the Period of Administrative Control. All Owners shall pay their portion of the Common Expenses, subject to the following:
- (a) Some Owners may receive services or benefits not received by all Owners. The Association and the Master Association shall equitably apportion those expenses associated with unique and limited services to those Owners who receive the limited and unique service, the intent being to not charge Owners for services or benefits they have no ability to use or receive.
  - (b) The power to equitably apportion some expenses to specific Owners and not to other Owners may only be exercised when a group of Owners collectively receive a service or benefit that is not available to the remaining Owners and where it would be manifestly unjust to charge all Owners for such service or benefit. By way of illustration, if some Owners receive and pay for individual garbage service, they should not be assessed a Common Expense for use of a common garbage dumpster used by other Owners; and if some Owners have a carport as part of their Limited Common Area, the costs and expenses associated with maintenance, repair and replacement of the carport, including reserve costs, should be assessed to those Owners with carports and not to those Owners who have no carport assigned for their use.
  - (c) The Declarant shall establish the Common Expense assessments in a manner consistent herewith, which amounts may be adjusted as needed to equitably apportion the Common Expenses among all Owners. The Common Expense assessments made by the Declarant shall be conclusive and shall, upon the inclusion of Additional Property, Lots and Units in the Master Community, be amended and attached to an amended declaration approved solely by the Declarant, which exhibit shall be final and may not be modified unless approved, after the Period of Administrative Control, by a vote of not less than sixty-seven percent (67%) of the total votes within the membership of the Association.
  - (d) Declarant may apportion Common Expenses based not solely on the amount of Common Area within a Sub-Association, but based on the overall access Lot Owners and Unit Owners have to the Common Areas (e.g., driveways and parking) and their use of common amenities (e.g., management services and other professional services). For example, it is anticipated some Sub-Associations shall contain more asphalt and driveway areas within their Common Areas than other Sub-Associations, yet all Owners will have and may need the same ability to use and

access all driveways within all the Common Areas. Consequently the Declarant and the Master Association shall assess all Owners equally for this Common Expense. However, the Declarant may adjust this Common Expenses to reflect higher traffic use in driveways by Owners of commercial Units and Lots and a need for increased maintenance and safety, thus resulting in a higher Common Expense for commercial Units and Lots. Consequently the Master Association Percentage Interest figures may be adjusted to reflect these types of characteristics. The Master Association Percentage Interest figures should be reflective of the sharing of Common Expenses for amenities or services common to all Sub-Associations that are part of the Master Community, while the Common Expenses assessed for amenities and services particular to an individual Sub-Association should be reflective of unique expenses related solely to that Sub-Association's Common Areas. Items such as roof maintenance, exterior building maintenance, insurance, and similar type Common Expenses shall be assessed as either part of a Master Association's Common Expenses or the Association's Common Expenses, depending on the similarity of each Sub-Association's Common Areas and Common Expenses. Also, see the Master Declaration for additional figures and amounts.

- (e) The initial monthly Common Assessments are projected to be \$125.00 per residential condominium Unit.

- 11.3 **Annual Budget.** Annually, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Common Area. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners annually. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.
- 11.4 **Basis of Annual Budget.** The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Common Expenses") arising out of or connected with maintenance and operation of the Common Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve and reserve fund required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.
- 11.5 **Annual Assessments.** Subject to the Association's ability to adjust Common Expenses as provided in Article 11.2 above, the Association shall establish a regular monthly assessment against each Owner, which assessment shall be based on the Percentage Interest set forth in

Exhibit "F" and be paid by each Owner into a Common Expense fund ("Common Expense Fund"). The foregoing method of assessing the Common Expenses to the Owners may be altered by the Master Association as provided in Article 11.2 so long as the method it adopts is consistent with good accounting practice. Each monthly installment of the regular assessment not timely paid by the 5<sup>th</sup> day of the month shall bear interest at the rate of one and one-half percent (1½ %) per month from the date it becomes due and payable until paid, as well as a late fee in an amount established by the Board, not to exceed \$50.00 per month. Failure of the Association to give timely notice of any assessment as provided herein or to prepare an annual budget shall not affect the liability of an Owner for such assessment.

- 11.6 **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments as needed. No vote of the Owners shall be required to approve an assessment needed to repair or maintain portions of the Common Area that the Association is responsible to repair and maintain. Any amounts assessed pursuant hereto shall be apportioned among and assessed to all Units and Unit Owners. Notice in writing of the amount of such assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any assessment shall bear interest at the rate of one and one-half percent (1½ %) per month from the date such portions become due until paid plus late fees as established by the Board not to exceed \$50.00 per month.
- 11.7 **Declarant's Obligations.** Notwithstanding the preceding provisions of this Article XI to the contrary, Declarant or Declarant's successor in interest shall not be obligated to pay any Common Expense assessment or any other assessment to the Association unless the conditions stated herein are first met. Assessments against a Unit owned by Declarant, or a builder who received title from Declarant, shall first become due when a Unit (1) has been conveyed from Declarant to a third party (e.g., a builder); (2) a Unit has been constructed; and (3) an Owner, not including the builder of the Unit, has received title to the Unit or otherwise moved into or occupied the Unit.
- 11.8 **Lien for Assessments.** All sums assessed to a Unit Owner pursuant to the provisions of this Article XI, together with interest thereon as provided herein, is secured by virtue of this Declaration as a lien on such Unit in favor of the Association and Master Association. To evidence a lien for sums assessed pursuant to this Declaration, the Association or Master Association may prepare a written notice of lien in conformance with Utah law. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or its attorney and may be recorded in the office of the Cache County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by nonjudicial foreclosure by the Association or Master Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall also be required to pay to the Association and Master Association any assessments against the Unit which shall become due during the period of foreclosure and the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien, and all reasonable attorney fees.

- 11.9 **Personal Obligation of Owner.** The amount of any regular or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association and Master Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association and Master Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his Unit, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Association and Master Association in connection therewith, including reasonable attorney fees.
- 11.10 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Association or Master Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Association or Master Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association or Master Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8-45 to Richard W. Jones, as trustee, an attorney licensed in the State of Utah, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of assessments under the terms of the Declaration. The Association may appoint a substitute trustee by executing a substitution of trustee as authorized in Utah Code Annotated, Section 57-1-22, without amending this paragraph.
- 11.11 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit and payment of any reasonable fee assessed as authorized by law, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Unit, and (b) the amount of the current regular assessment with respect to such Unit and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

- 11.12 **Personal Liability of a Purchaser.** In a voluntary conveyance, the purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 11.13 **Amendment of Article.** Except as may be necessary to conform to the law, as it may be amended from time to time, this Article XI shall not be amended unless the Owners of two-thirds (2/3) of the Units in the Project consent and agree to such amendment by a duly recorded instrument.

## ARTICLE XII INSURANCE

**NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.**

- 12.1 **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association or Master Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.
- 12.2 **Property Insurance.**
- (a) **Association to Insure Buildings.** The Association or Master Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area, buildings, Units and fixtures and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
- (1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
- (2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (3) The blanket policy shall be in an amount not less than one hundred percent

(100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

- (4) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
  - (5) Each property policy that the Association is required to maintain shall also contain or provide for Inflation Guard Endorsement, if available.
- (b) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (1) The Association's policy provides primary insurance coverage, and:
    - (a) the Owner is responsible for the Association's policy deductible; and
    - (b) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
  - (2) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and
  - (3) If an Owner does not pay the amount required under Subsection (2) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.
- (c) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's 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 © the Association need

not tender the claim to the Association's insurer.

- (d) **Deductible Notice.** The Association or Master Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association or Master Association fails to provide notice of the initial deductible, it shall be responsible for the deductible as provided under Utah law in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- (e) **Owner's Responsibility for Personal Property.** The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal property, and each Owner shall be responsible for obtaining and maintaining such personal property insurance.
- 12.3 **Comprehensive General Liability (CGL) Insurance.** The Association or Master Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.
- 12.4 **Director's and Officer's Insurance.** The Association and Master Association shall obtain Directors' and Officers' liability insurance protecting the Declarant, 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 breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 12.5 **Theft and Embezzlement Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, officers, directors, and employees of any Manager of the Association, and (d)



coverage for acts.

- 12.6 **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.
- 12.7 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.
- 12.8 **Named Insured.** The named insured under any policy of insurance shall be the Association; and the Declarant shall be listed by name as an additional insured under any and all policies of insurance. The Declarant and each Owner shall also be an insured under all property and CGL insurance policies.
- 12.9 **Right to Negotiate All Claims & Losses & 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 Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim.
- This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.
- 12.10 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 12.11 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

- 12.12 **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant, the Association and the Owners and their respective affiliates, agents and employees.
- 12.13 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

### ARTICLE XIII COMPLIANCE WITH DECLARATION AND BYLAWS

- 13.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 13.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against the Association, shall be enforceable by Declarant or by any Owner of a Unit, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person, shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

### ARTICLE XIV COLLECTION FROM RENTERS

- 14.1 **Collecting Fees from Renters.** If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Board may require the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid.
- 14.2 **Notice to Unit Owner.** The Board shall give the Unit Owner written notice of the Board's intent to demand full payment of all delinquent assessments from the Owner's tenant. This notice shall be sent by regular first class mail to the last known address of the Owner, as provided on the records of the county recorder or as provided by the Unit Owner to the Board. The notice shall inform the Owner that all delinquent assessments must be paid to the Association within fifteen (15) days from the date the notice is mailed to the Unit Owner, and if payment is not received within fifteen (15) days, the Board shall notify the tenant that

future lease payments shall be paid to the Association and not to the Unit Owner. This notice to the Owner shall also:

- (a) provide that the Board will give notice to the tenant that full payment of remaining lease payments will begin with the next monthly payment unless the delinquent assessment is paid by the Unit Owner within fifteen (15) days from the date contained on the notice;
- (b) state the amount of the delinquent assessment due, including any interest or late payment fee;
- (c) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and;
- (d) contain a copy of this amendment authorizing the Board to collect delinquent HOA fees from tenants, and a copy of the state law (U.C.A. 57-8-53) authorizing such action to be taken.

14.3 **Notice to Tenant.** If the Unit Owner fails to pay the amount of the assessment due within the fifteen (15) day period specified in the notice, the Board shall deliver written notice to the tenant that informs the tenant that all future payments due from the tenant to the Owner shall be paid to the Association. The notice to the tenant shall be served on the tenant by: (1) posting a notice on the door of the tenant's Unit, (2) mailing a notice to the tenant at the address of the Unit, or (3) delivering notice personally to the tenant. A copy of the notice shall be mailed to the Unit Owner. The notice provided to the tenant shall also state:

- (a) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Board's intent to collect all lease payments due to the Association;
- (b) that until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and
- (c) payment by the tenant to the Association will not constitute a default under the terms of the lease agreement with the Unit Owner/landlord. If payment is in compliance with this notice, suit or other action may not be initiated by the Owner against the tenant for failure to pay.

14.4 **Disbursement of Funds Collected.** All funds paid to the Association pursuant to the notice shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the Association.

14.5 **Terminating Collection.** Within five business days of payment in full of the assessment,

including any interest or late payment fee, the Board must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification shall be mailed to the Unit Owner.

- 14.6 **Definition of Lease.** As used in this section, "lease" or "leasing" means regular, exclusive occupancy of a Unit by any person or persons, other than the Unit owner, for which the Unit owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

#### **ARTICLE XVI REINVESTMENT FEE**

- 15.1 **Adoption of Reinvestment Fee.** The Association hereby adopts a Reinvestment Fee. The Amount of the Reinvestment Fee shall be 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.
- 15.2 **Runs with the Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A" and is intended to bind successors in interest and assigns of the real property described in Exhibit "A", attached hereto.
- 15.3 **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", attached hereto.
- 15.4 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 25 years.
- 15.5 **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.
- 15.6 **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- (a) an involuntary transfer;
  - (b) a transfer that results from a court order;
  - (c) 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;
  - (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
  - (e) 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 \$250.
  - (f) the transfer of any Lot from the Declarant to any LLC or other affiliate owned by, or associated with, Declarant.

**ARTICLE XVI  
DECLARANT'S SALES PROGRAM**

- 16.1 **Declarant's Right to Promote and Sell the Project.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be an Owner ("Occurrence"), Declarant, its successor or assigns shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Units owned by Declarant:
- (a) **Sales Offices and Model Units.** Declarant, its successors and assigns, shall have the right to maintain sales offices, including a trailer, and model homes on Units. Sales offices may be located on any Unit (at any location) owned by Declarant or may be located on any of the Common Area. Declarant shall have the right to maintain any number of model homes it may desire using the Units Declarant owns.
  - (b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on the Common Area or Units owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary.
  - (c) **Right to Use the Common Area.** Declarant shall have the right to use the Common Area of the Project to entertain prospective purchasers or to otherwise facilitate Unit sales, provided said use is reasonable as to both time and manner.
- 16.2 **Declarant's Rights to Relocate Sales and Promotional Activities.** Declarant shall have the right from time to time to locate or relocate its sales offices, trailer, model homes and signs, banners and similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portions of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any sales structures, fixtures, improvements, signs, banners and similar sales materials and properties.
- 16.3 **Limitation on Amending Association Documents.** During any time Declarant holds an ownership interest in any Unit or in any portion of the property, no amendment shall be made to the Declaration, Bylaws or Rules without the written consent and approval of the Declarant.

**ARTICLE XVII  
MORTGAGEE PROTECTION**

- 17.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosures or trustee's sale.

- 17.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Unit made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.
- 17.3 **Prior Liens Relate Only to Individual Units.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Unit and not to the Project as a whole.
- 17.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Unit by the foreclosure of the Mortgage on the Unit or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrued prior to the date of the acquisition of title to such Unit by such acquirer.
- 17.5 **Written Notice.** The Association shall provide timely written notice to all Mortgagees of the following:
- (a) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage;
  - (b) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
  - (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
  - (d) any proposed action that requires the consent of a specified percentage of Mortgagees.
- 17.6 **Amendment.** No provision of this Article XVII shall be amended without the consent of at least fifty-one percent (51%) of all first Mortgagees as they appear on the official records of Cache County, Utah, as of the date of such amendment, which consent may be deemed granted by the provisions of the Community Association Act, U.C.A. § 57-8-41.
- 17.7 **Project Termination.** Any action to terminate the legal status of the Project or to use insurance proceeds for any purpose other than to rebuild the Project must be agreed to by the Mortgagees that represent at least 51% of the Unit votes (based on one vote for each first Mortgage owned) that are subject to first lien mortgages.

**ARTICLE XVIII**  
**DISPUTE RESOLUTION**

- 18.1 **Statement of Intent.** Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit and Dwelling the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant or the contractor who built the Unit. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any contractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Unit and the Declarant agree and acknowledge that claims and disputes with Declarant and or the contractor who built the Unit shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Units and Common Area AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant and the contractors who build the Units specifically disclaim any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.
- 18.2 **Arbitration.** To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant or contractor who built a Unit, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Unit, Common Area, or any other component of the Project (a "Dispute"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant, the contractor, and any Owner or between or involving the Declarant, the contractor, and the Association. Arbitration proceedings shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 18.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include:
- (a) Any allegation that a condition in any of the Units, Dwellings, or Common Area is a construction defect;
  - (b) Any disagreement as to whether an alleged construction defect has been corrected;
  - (c) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
  - (d) Any disagreement as to the enforceability of any warranties alleged to be applicable

- (e) to the subject matter of any Dispute;  
Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- (f) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- (g) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- (h) Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
- (i) Any disagreement concerning the issues that should be submitted to binding arbitration;
- (j) Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
- (k) Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- (l) Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Units, Dwellings, or Common Areas.

**18.3 Pre-Arbitration Requirements.** An Owner or the Association may only pursue a claim against the Declarant or contractor to the extent described herein or by law after the following dispute resolution efforts have been completed:

- (a) **Right to Cure:** the Owner shall provide to the Declarant or contractor a written Notice of Claim (defined below) and permit the Declarant or contractor one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings;
- (b) If the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant or contractor that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.
- (c) "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.



- 18.4 **Binding Arbitration.** If a claim or dispute has not been resolved after satisfying and complying with the above-described “Pre-Arbitration Requirements,” then the claimant (Owner or Association or contractor) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after first obtaining a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.
- 18.5 **Fees and Costs.** Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitrator shall not award attorney fees or expert witness fees to the prevailing party. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties.
- 18.6 **No Court Proceeding.** If any Owner, the Association, or the Declarant or contractor files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.
- 18.7 **Subrogation.** The Association and each Owner waives any right to subrogation against the Declarant and any builder and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the engineer, and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, their respective officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from

any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

- 18.8 **No Rights Created.** Nothing in this Declaration or in this Article XVIII shall grant or otherwise create a right of action by the Association against the Declarant, the developer or the builder, that does not otherwise already exist under Utah law.

#### **ARTICLE XIX EXPANSION**

- 19.1 **Declarant's Option to Expand.** Declarant hereby exclusively reserves the option to expand the Master Community (the "Option to Expand") by adding Additional Property to the Master Community and developing Lots, Units and Common Area in Sub-Associations upon the terms and provisions set forth in this Article without the prior consent of the Owners or the Association. Declarant makes no representation regarding the number of Lots or Units that may be included in the Master Community. Only Declarant and its assigns may exercise the Option to Expand, and Declarant and its assigns shall have the right to expand the Master Community and the Master Association even if Declarant no longer owns any Lot or Unit within an earlier phase of the Master Community. If the Option to Expand is exercised by Declarant or its assigns, it may do so at any time after the recording of this Declaration. There is no obligation of any kind whatsoever for the Declarant or its assigns to exercise the Option to Expand. The terms and conditions of the Option to expand shall be as follows:

- (a) The completed Master Community shall not contain more than one hundred six (106) total Lots or Units, which Lots and Units shall be created within various Sub-Associations and be subject to the Master Declaration. The additional Lots or Units may contain additional Common Areas, which the Association shall own and be required to maintain according to the requirements found in the Declaration and the Master Declaration.
- (b) Subject to the provisions of Section 19.1(c) below, the Option to Expand may be exercised at different times as to all or any portions of any Additional Property. In the event the Option to Expand is exercised with respect to a portion of the Additional Property, the Option to Expand may subsequently be exercised with respect to any other portion of Additional Property. There are no limitations as to when or how portions of the Additional Property may be added.
- (c) Declarant shall not be restricted in the location of improvements on the Additional Property or in the number or kind of Units, Units or structures that may be created on the Additional Property, except as may be required by applicable zoning requirements, ordinances or regulations, provided the Master Community, when completed shall not exceed one hundred six (106) Lots, Units, Dwellings or commercial buildings.
- (d) The Sub-Associations, Dwellings and buildings to be located on the Additional Property shall be subject to the same uses as provided in this Declaration and the

Master Declaration, as applicable. Declarant reserves the right to exercise all developmental rights reserved or afforded in this Declaration with respect to any Lots, Units or Common Areas located on the Additional Property.

- (e) Declarant reserves the right to add additional Common Areas to the Additional Property without limitation.
- (f) The Percentage Interest for Assessments and votes for all Lots and Units in the Master Community shall be changed at the time Declarant records a Sub-Association declaration, a supplemental Master Declaration, and an additional or supplemental Plat reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in the article.
- (g) After Additional Property is added to the Master Community, each Unit Owner shall continue to have votes for Association matters and the obligation to pay the Percentage Interest of the Common Expenses, subject to Declarant's authority to adjust the Percentage Interest as stated in this Declaration and the Master Declaration.
- (h) Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Master Community, shall be deemed to have consented to all provisions of this Article XIX, including the procedure for adjustment of the Percentage Interest. After the filing for record of any Sub-Association Declaration, amendment to the Master Declaration, and/or supplemental Plat reflecting Declarant's exercise of the Option to Expand, or any other part thereof, legal and equitable title to each Unit thereby created within the Additional Property shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Unit.
- (i) Declarant shall not be required to obtain the consent of any Owners or of any other Person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Property or creating additional Sub-Associations that shall be part of the Master Association.
- (j) No provision of this Article XIX shall be amended without the prior written consent of Declarant, so long as Declarant or its assigns or successors owns or has the right to acquire any Units or build Units and Dwellings on the Additional Property.

19.2 **Expansion of Additional Property.** In addition to the provisions for annexation specified in this Article XIX and subject to the applicable laws in effect from time to time, the Additional Property may be expanded to include additional real property, not as yet identified. Such property may be annexed to the Additional Property in accordance with the then current applicable laws.

**ARTICLE XX  
GENERAL PROVISIONS**

- 20.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project and the Master Community. Failure to enforce any provision, restriction, covenant, or condition in this Declaration or the Master Declaration, or in any supplement or amendment thereto, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.
- 20.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 20.3 **Registration of Mailing Address.** Upon the purchase of any Unit, the Owner of such Unit shall register with the Association the Owner's current mailing address. All notices or demands intended to be served upon any Owner shall be sent as provided in the Bylaws.
- 20.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.
- 20.5 **Amendment.**
- (a) Except as otherwise provided herein, this Declaration, and any amendments to the Declaration, may be amended with or without a meeting of the Owners by the affirmative consent or vote of at least sixty-seven percent (67%) of the Percentage Interest of the Owners. All necessary written consents must be obtained prior to the expiration of ninety (90) days from the date the first written consent is obtained. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by an officer of the Association certifying that the vote required by this Article has occurred, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Cache County, State of Utah.
  - (b) During the Period of Administrative Control, the Declarant shall have and is hereby vested with the right to amend this Declaration and the Plats by an instrument duly executed and acknowledged by Declarant and recorded in the Official Records of the County Recorder of Cache County, Utah. Such right of amendment shall apply

without regard to the subject matter or the nature of the amendment involved, shall include the right to adjust the Percentage Interest, and shall not take away any substantive legal rights of those Owners who own a Unit at the time of such amendment by the Declarant except as stated herein.

- 20.6 **Effective Date.** This Declaration and any amendments thereto shall take effect upon recording.
- 20.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.
- 20.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, ground water, rain, snow or ice, or the settling of ground beneath a Unit. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.
- 20.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Unit. The Owner of a Unit shall have no obligation for expenses or other obligations accruing after he conveys title to such Unit.

*[Signatures on Following Page]*

EXECUTED BY DECLARANT named below on the date of notarization appearing below:

**Declarant:**

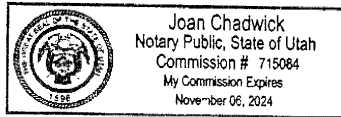
**River Valley Development, LLC**

By B Stocking  
Its: Manager

STATE OF UTAH        )  
  :SS.

COUNTY OF ~~CACHE~~ )  
Box Elder

On this 29 day of July, 2021,  
Burdette Stocking personally appeared before me, Joan Chadwick  
who acknowledged to me that he is the manager of **River Valley Development, LLC**, and is authorized to,  
and did in fact execute this Declaration on behalf of **River Valley Development, LLC**.



Joan Chadwick  
Notary Public

**Exhibit "A"**

**LEGAL DESCRIPTION**

**1600 Park Avenue, Condominium "C"**

All of Units 109 thru 124, 1600 Park Avenue Condominium "C", Logan City,  
Cache County, State of Utah

Parcel numbers: 04-234-0109 through 04-234-0124

All of Units 209 thru 224, 1600 Park Avenue Condominium "C", Logan City,  
Cache County, State of Utah

Parcel numbers: 04-234-0209 through 04-234-0224

Ent 1294397 Bk 2273 Pg 0135

**Exhibit "B"**

**PLAT**



2/24/2021

CORE - Recorded Document #1250157

Ent 1294397 Bk 2273 Pg 0136

**1600 PARK AVENUE, CONDOMINIUM "C"**  
PART OF THE NORTH HALF OF SECTION 24, T11N, R11E, S4E, CO. OF CANYON, UTAH

**STATUS**

REVISION	DATE	BY
1	2/24/2021	AL
2	2/24/2021	AL
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95	2/24/2021	AL
96	2/24/2021	AL
97	2/24/2021	AL
98	2/24/2021	AL
99	2/24/2021	AL
100	2/24/2021	AL

**COUNTY RECORDER'S CERTIFICATE**

**CITY ENGINEER APPROVAL**

**LIMITED LIABILITY COMPANY KNOWLEDGE/NOTICE**

Entry #1250157

2/24/2021

CORE - Recorded Document #1250157 Ent 1294397 Bk 2273 Pg 0137

2ND FLOOR LEVEL  
SCALE: 1/8" = 1'-0"

1ST FLOOR LEVEL  
SCALE: 1/8" = 1'-0"

CROSS SECTION  
SCALE: 1/8" = 1'-0"

LEGEND

WALLS  
PARTITIONS

ADDITIONAL DIMENSIONS AND NOTES

NO.	DESCRIPTION	LENGTH	WIDTH	AREA	PERIMETER
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1650 PARK AVENUE  
COMMERCIAL  
BLDG. TYPE: B

Entry #1250157

2/24/2021

CORE - Recorded Document #1250157

Ent 1294397 Bk 2273 Pg 0138

2220-1981  
-3

2ND FLOOR LEVEL  
SCALE: 1/8" = 1'-0"  
DATE: 02/24/2021  
PROJECT: 1600 PARK AVENUE CONDOMINIUM 'C'

1ST FLOOR LEVEL  
SCALE: 1/8" = 1'-0"  
DATE: 02/24/2021  
PROJECT: 1600 PARK AVENUE CONDOMINIUM 'C'

CROSS SECTION  
1/4" = 1'-0"

LEGEND  
 [Pattern] BRICK OVER GLASS  
 [Pattern] BRICK SAVED CORNER

1600 PARK AVENUE  
CONDOMINIUM 'C'  
BLDG TYPE C

Entry #1250157

Ent 1294397 Bk 2273 Pg 0139

**Exhibit "C"**

**BYLAWS**

# BYLAWS

FOR THE

## 1600 Park Avenue Condominium "C" Association

The following are adopted as the administrative Bylaws of 1600 Park Avenue Condominium "C" Association ("Association"), which Association has been created to govern the Units and Common Area located in Park Avenue Condominium "C" ("Park Ave. Condo "C") in Cache County, Utah.

### ARTICLE I

#### PLAN OF UNIT OWNERSHIP AND INCORPORATION

- 1.1 **Submission.** These Bylaws are adopted by the Owners of Units in Park Ave. Condo "C". These Bylaws shall govern the administration of 1600 Park Avenue Condominium "C" Association .
- 1.2 **Definitions.** The words defined in Article I of the Declaration of Condominium for 1600 Park Avenue Condominium "C", shall have the same meaning when used herein unless the context clearly requires another meaning.
- 1.3 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration or any amendments thereto, the latter shall in all instances govern and control.
- 1.4 **Office and Registered Agent.** The Registered Agent of the Association shall be the President or Secretary of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designated by him.
- 1.5 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Park Ave. Condo "C" shall be subject to and abide by these Bylaws.

### ARTICLE II

#### ASSOCIATION

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Park Ave. Condo "C".
- 2.2 **Voting.** Each Owner shall have the Percentage Interest in voting set forth in Exhibit "F" to the Declaration, subject to the voting rights of the Class B member as set forth in the

Declaration.

- 2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
- 2.4 **Annual Meeting.** The annual meeting of the Association shall be held at such suitable day, date and time as may be designated by the Board from time to time. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.
- 2.5 **Special Meetings.** The President shall call a special meeting (a) if he or she so desires, (b) if a majority of the members of the Board of Directors direct him to do so, or (c) upon receipt of a petition signed and presented to the Secretary of the Board by at least fifty-one percent (51%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
- 2.6 **Notice of Meeting.** It shall be the duty of the Secretary to give notice of (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Unit or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- 2.7 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) **Mail.** If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.
- (b) **Electronic.** If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well known electronic forms, such as Facebook) and the Association shall send

notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Unit Owner by mail.

- (c) **Personal.** If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Unit, or by securely attaching a copy of the notice to the front entry door of the Owner's Unit.
- 2.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments due.
- 2.9 **Proxies.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.
- 2.10 **Quorum.** A majority of the members (51% or more) of the Association shall constitute a quorum for a meeting unless otherwise stated in the Declaration of Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days nor more than thirty (30) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association present at the meeting either in person or by proxy, shall decide any question brought before the meeting; provided, however, if the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.
- 2.11 **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) roll call to determine quorum status;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special Boards, if any;
- (f) appointment of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

- 2.12 **Conduct of Meeting.** The President shall, or in his absence the Vice-president, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

### ARTICLE III BOARD OF DIRECTORS

- 3.1 **Powers and Duties.** The affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Board may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for at least the following:

- (a) Preparation of an annual budget;
- (b) Determining the annual assessment of each Owner;
- (c) Managing the Association;
- (d) Maintaining the Common Area;
- (e) Collecting the Assessments;
- (f) Depositing the collections into a federally insured interest bearing account or accounts;
- (g) Adopting and amending rules and regulations;
- (h) Enforcing the Project Documents;
- (i) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (j) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.
- (k) Commencing legal action when necessary;
- (l) Purchasing and maintaining insurance for the Association and the Board;
- (m) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Units.
- (n) Keeping books and records of the Association;



- (o) Providing common utility services as needed;
  - (p) Paying any amount necessary to discharge any mechanic's or materialman's lien or other encumbrance levied against the Common Area;
  - (q) Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
  - (r) Levying fines, sanctions and citations;
  - (s) Making emergency repairs;
  - (t) Towing or impounding motor vehicles;
  - (u) Evicting non-Owner residents in material violation of the Project Documents or who have created and failed to abate a nuisance; and
  - (v) Doing such other things and acts necessary to accomplish the foregoing.
- 3.2 **Composition of Board of Directors.** The Board of Directors shall be composed of three (3) members of the Association.
- 3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Unit shall serve on the Board at any given same time.
- 3.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be one (1) year and each member shall serve on the Board until such time as his successor is duly qualified and elected.
- 3.5 **Initial Organizational Meeting.** The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.
- 3.6 **Regular Meetings.** Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly.
- 3.7 **Special Meetings.** Special meetings of the Board may be called by the President, Vice-president or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, by telephone or electronic means, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.
- 3.8 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- 3.9 **Quorum.** At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the

Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no shorter than two (2) days nor more than 5 days and give notice of the rescheduled meeting to the members not in attendance. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

- 3.10 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting.
- 3.11 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.12 **Compensation.** Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.
- 3.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.
  - (b) **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon

private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.

- (c) **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board.

- 3.14 **Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### **ARTICLE IV NOMINATION AND ELECTION OF BOARD MEMBERS**

- 4.1 **Nomination Process.** The process for the nomination and election of the Board of Directors shall proceed as set forth herein.
- 4.2 **Nominating Committee.** Nominations for election to the Board shall be made by a Nominating Committee, whose purpose is to seek out and locate qualified individuals as candidates for election to the Association's Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the existing Board, and three or more additional members of the Association, who may or may not be current members of the Board. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Association at which an election will be held. The Nominating Committee shall serve for a term of one year. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Nominating Committee may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Nominating Committee's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Nominating Committee shall submit to the Board those names as candidates which a majority of the Nominating Committee recommend be placed on the Association ballot. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Article 4.2, then nominations shall be made from the floor at the annual meeting or any special meeting.
- 4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 4.4 **Nominations.** The names of the candidates recommended by the Nominating Committee shall be included in the Notice of the annual meeting sent to members of the Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Association from the

floor at the annual meeting of the members.

- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Unit is entitled to vote as provided in the Declaration and Bylaws. Voting need not be conducted by secret ballot.

#### **ARTICLE V OFFICERS**

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice-president, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 5.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all Boards; he shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties, which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
- 5.5 **Vice-president.** The Vice-president shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice-president is able to act, the Board shall appoint a member of the Board to do so on an interim basis.
- 5.6 **Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for Boards when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and

their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

- 5.7 **Treasurer.** The Treasurer shall have custody of all funds and securities. He shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

**ARTICLE VI  
FISCAL YEAR**

- 6.1 The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

**ARTICLE VII  
AMENDMENT TO BYLAWS**

- 7.1 **Amendments.** These Bylaws may be modified or amended either by the affirmative vote of a majority of the members of the Association. During the Period of Administrative Control, no amendment to these bylaws may be adopted without the written approval of the Declarant.

**ARTICLE VIII  
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.
- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the Cache County Recorder.

**Exhibit "D"**  
**MAINTENANCE CHART**

The following chart defines the division of responsibility for maintenance and payment of repairs of various areas between the 1600 Park Avenue Master Association ("Master HOA"), 1600 Park Avenue Condominium "C" Association ("HOA") and the Unit Owners ("Owner").

	<b>EXTERIOR</b>	<b>MASTER HOA</b>	<b>HOA</b>	<b>OWNER</b>
1	Maintenance of, repair, paint and replace roof and stucco/siding		X	
2	Maintenance of, replace and repair of exterior brickwork		X	
3	Maintenance of, replace and repair of front steps and sidewalk		X	
4	Maintenance of, replace and repair of concrete foundations and entrees		X	
5	Maintenance of, replace and repair of balconies and patio concrete		X	
6	Maintenance of and replace and repair of any perimeter fences bordering the Project		X	
7	Maintenance of and replace and repair non perimeter fences		X	
8	Maintenance of, replace and repair of rain gutters and down spouts		X	
9	Replacement, maintenance and repair of doors, hinges, frames, thresholds, locks, doorbells and chimes			X
10	Replacement, maintenance and repair of carport structure		X	
11	Replacement, maintenance and repair of windows, sliding glass doors, screens and frames			X
12	Replacement, maintenance and repair of all lights that use electricity from the Dwelling			X
13	Replacement, maintenance and repair of all lights attached to the exterior walls		X	
14	Maintenance of gas lines and electric wiring connections from the meters to the Dwelling			X
15	Maintenance of water system from the outside entry through the foundation and throughout the Dwelling. This includes the outside faucets and hose bibs. Any water damage due to leaks caused by this portion of the water system is the liability of Unit Owner			X
16	Replacement and repairs to outside water spigots and bibs		X	
17	Replacement, repair and maintenance of phone lines, TV cables, air conditioning, satellite dishes antennas			X
18	Unit Owner improvements: windows, attic vents and similar items			X
19	Maintenance, replacement and repair of sprinkler lines and sprinkler heads on Lots	X		
20	Lawn mowing on Lots	X		

	<b>INTERIOR</b>	<b>MASTER HOA</b>	<b>HOA</b>	<b>OWNER</b>
21	All interior painting, decorations and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and intercom, telephone, and computer wiring and networks			X
22	Maintenance, cleaning and repair of venting, chimneys and fireplaces			X
23	Maintenance, repair and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets including switches and light fixtures			X
24	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves			X
25	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal settling			X
26	Repairs of damage resulting from static water or seepage of water from any underground source (except sprinkler system failures)			X
27	Repairs of damage resulting from surface water			X
28	Repairs of damage to interior of a Dwelling resulting from static water, rain, or seepage of ground water			X

	<b>GROUNDS</b>	<b>MASTER HOA</b>	<b>HOA</b>	<b>OWNER</b>
29	Lawn, flowers, trees and shrubs in the Common Area	X		
30	Lawn watering systems on the Common Area	X		
31	Snow removal in parking lot and Association Common Areas	X		
32	Snow removal from driveway and porch and sidewalks on a Unit	X		
33	Maintenance, repair and replace carport asphalt	X		

	<b>OTHER</b>	<b>MASTER HOA</b>	<b>HOA</b>	<b>OWNER</b>
34	Garbage collection	X		
35	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Dwelling		X	
	[reserved for future use]			
	[reserved for future use]			

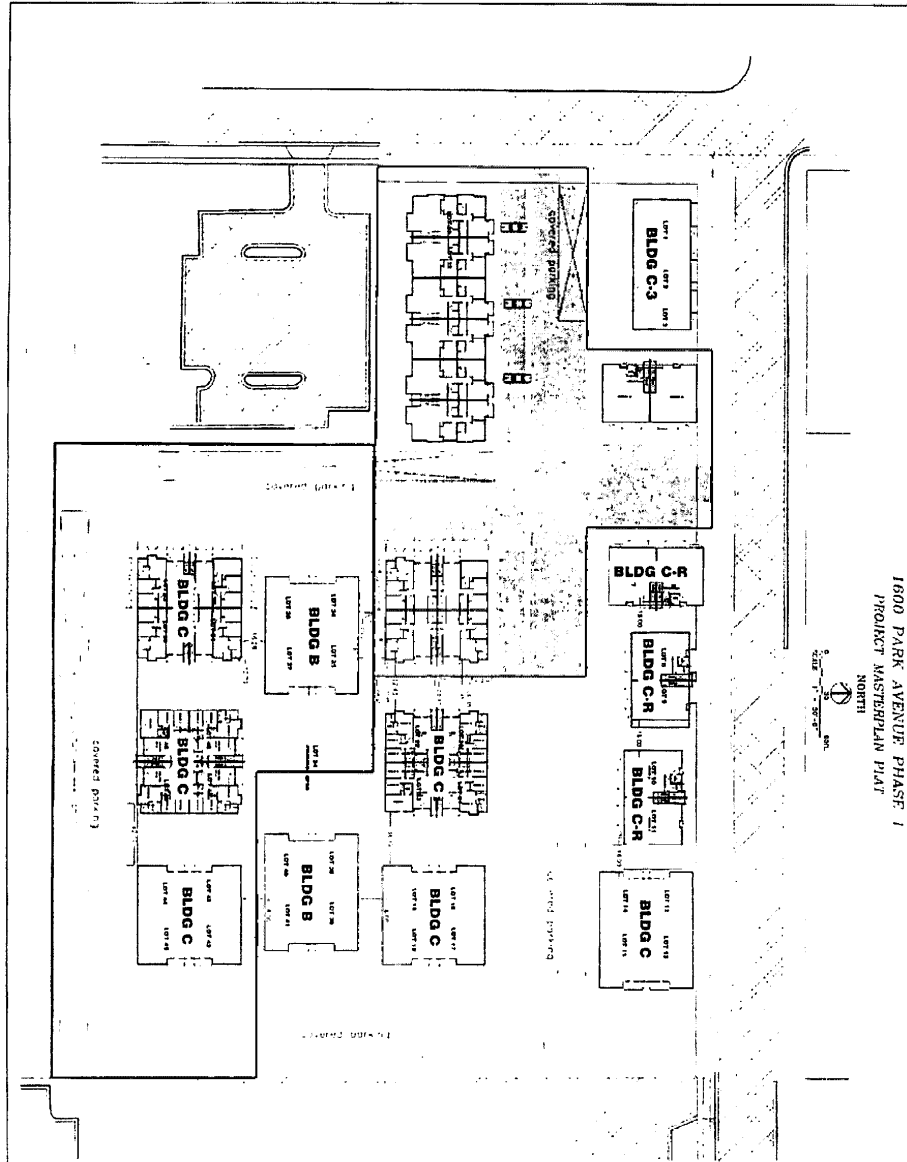
Any portion of a Unit not clearly identified above as being the responsibility of the Association shall be the exclusive responsibility of the owner to maintain, repair or replace. The Master Association may assume the responsibilities of the Association contained herein as it sees fit.



Ent 1294397 Bk 2273 Pg 0152

**EXHIBIT "E"**

**MASTER MAP**



Ent 1235855 Bk 2116 Pg 1582

	<p><b>1600 PARK AVENUE MASTER PLAN</b> PART OF THE RECORDABLE OF SECTION 21 OF TOWNSHIP 1 NORTH AND RANGE 1 EAST AND EXHIBIT AND A PARTIAL SECTION 22 OF TOWNSHIP 1 NORTH RANGE 1 EAST</p> <p><b>PROJECT MASTER PLAN</b></p>	<table border="1"> <tr> <td>DATE:</td> <td>11/15/22</td> </tr> <tr> <td>BY:</td> <td>...</td> </tr> <tr> <td>SCALE:</td> <td>...</td> </tr> </table>	DATE:	11/15/22	BY:	...	SCALE:	...			
DATE:	11/15/22										
BY:	...										
SCALE:	...										

**EXHIBIT "F"****PERCENTAGE INTEREST**

1600 Park Avenue Condominium "C" Association

Unit No.	Percentage Interest in Common Areas	Voting Interest Percentage	Unit No.	Percentage Interest in Common Areas	Voting Interest Percentage
109	3.125 %	3.125 %	208	3.125 %	3.125 %
110	3.125 %	3.125 %	210	3.125 %	3.125 %
111	3.125 %	3.125 %	211	3.125 %	3.125 %
112	3.125 %	3.125 %	212	3.125 %	3.125 %
113	3.125 %	3.125 %	213	3.125 %	3.125 %
114	3.125 %	3.125 %	214	3.125 %	3.125 %
115	3.125 %	3.125 %	215	3.125 %	3.125 %
116	3.125 %	3.125 %	216	3.125 %	3.125 %
117	3.125 %	3.125 %	217	3.125 %	3.125 %
118	3.125 %	3.125 %	218	3.125 %	3.125 %
119	3.125 %	3.125 %	219	3.125 %	3.125 %
120	3.125 %	3.125 %	220	3.125 %	3.125 %
121	3.125 %	3.125 %	221	3.125 %	3.125 %
122	3.125 %	3.125 %	222	3.125 %	3.125 %
123	3.125 %	3.125 %	223	3.125 %	3.125 %
124	3.125 %	3.125 %	224	3.125 %	3.125 %
<b>Total</b>	<b>100.00 %</b>	<b>100.00 %</b>		<b>100.00 %</b>	<b>100.00 %*</b>