

Recording Return To:

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AMENDED AND RESTATED
DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND
RESTRICTIONS

FOR

DAVENCOURT OF
SPANISH FORK
TOWNHOMES

A PLANNED UNIT DEVELOPMENT

IN

SPANISH FORK, UTAH COUNTY, UTAH

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AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR

**DAVENCOURT OF SPANISH FORK
TOWNHOMES**

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAVENCOURT OF SPANISH FORK TOWNHOMES (hereinafter the “Declaration”) is adopted by the Davencourt of Spanish Fork Homeowners Association (the “Association”), a Utah nonprofit corporation, and is effective as of the date it is recorded in the Utah County Recorder’s Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
- B. On October 13, 1998, a Plat map for Plat “A” Davencourt (A Planned Residential Development) was recorded in the Utah County Recorder’s Office as Entry No. 103758 (hereinafter “Plat A”).
- C. On October 13, 1998, a Declaration of Easements, Covenants, Conditions and Restrictions of Davencourt of Spanish Fork Townhomes, a Planned Unit Development (Expandable) Spanish Fork, Utah County, Utah was recorded in the Utah County Recorder’s Office as Entry No. 103759 (hereinafter the “1998 Declaration”). The 1998 Declaration referenced the Plat for the initial phase of the Project.
- D. On February 16, 1999, a Correction Affidavit was recorded in the Utah County Recorder’s Office as Entry No. 18056 to correct the legal description in the 1998 Declaration for the initial phase of the Project. The legal description in the Correction Affidavit matches the legal description for Plat A.
- E. On April 26, 2000, a Plat map for Plat “B” Davencourt (A Planned Residential Development) was recorded in the Utah County Recorder’s Office as Entry No. 32384:2000 (hereinafter “Plat B”).
- F. On April 26, 2000, a Declaration of Easements, Covenants, Conditions and Restrictions of Davencourt of Spanish Fork Townhomes, a Planned Unit Development (Expandable) Spanish Fork, Utah County, Utah, was recorded in the Utah County Recorder’s Office as Entry No. 32385:2000 (hereinafter the “2000 Declaration”).
- G. On October 9, 2003, a Plat map for Plat “C” Davencourt (A Planned Residential Development) was recorded in the Utah County Recorder’s Office as Entry No. 163949:2003 (hereinafter “Plat C”).
- H. On October 9, 2003, a Declaration of Easements, Covenants, Conditions and Restrictions of Davencourt of Spanish Fork Townhomes, a Planned Unit Development (Plat C) Spanish Fork, Utah County, Utah, was recorded in the Utah County Recorder’s Office as Entry No. 163950:2003 (hereinafter the “2003 Declaration”).

- I. This Declaration affects the real property located within the boundaries depicted on Plat A, Plat B, and Plat C in Utah County, State of Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- J. The areas within Plat A, Plat B, and Plat C have always operated as a single homeowners' association, which Association has been tasked with enforcing the covenants, conditions, restrictions, and other provisions set forth in the 1998 Declaration, 2000 Declaration, and 2003 Declaration for all Owners within the Project.
- K. The Association, with the authority and approval of the Owners, hereby adopts this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Project and which shall amend and completely replace the 1998 Declaration, 2000 Declaration, and 2003 Declaration and all prior declarations and amendments thereto related to Plat A, Plat B, and Plat C (regardless of whether such prior declarations and amendments thereto were recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
- L. This Declaration is adopted to replace and update the terms of the 1998 Declaration, 2000 Declaration, and 2003 Declaration and any amendments thereto, to further define the rights of the Association and the Owners, and to provide for a general plan for managing the Project, all of which is in furtherance of the Association's efforts to efficiently and economically protect and enhance the value of the Units and the Project and to create a superior living environment for all Owners and Occupants.
- M. The declarants for the Project are Pinnacle Development Group, L.L.C. for Plat A, Davencourt SF PUD LC, L.L.C. for Plat B, and Los Amigos Davencourt LLC for Plat C. All rights of the declarants defined in the 1998 Declaration, 2000 Declaration, and 2003 Declaration have expired pursuant to the terms of said declarations, and no declarant approval is required for the adoption of this Declaration.
- N. The Association, with the authority and approval of the Owners, hereby further desires to establish the Terms and Conditions for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project and/or the Property therein.

NOW, THEREFORE, it is hereby declared that the Property within the Project shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its easements, covenants, conditions, restrictions, and limitations, all of which shall constitute covenants that run with the land and shall be binding on and be for the benefit of the Association, its successors and assigns, and all Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

**ARTICLE 1
DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean the Community Association Act codified beginning at Section 57-8a-101, Utah Code Annotated.

- 1.2 “Allocated Interest” shall mean the interest of that Owner in the Common Expense liability, the payment of Assessments, for the purposes of voting in the Association, the payment of Assessments, and for other purposes indicated in this Declaration or the Act. Except as otherwise provided in this Declaration (such as in Section 3.4), each Unit shall have an equal Allocated Interest.
- 1.3 “Articles” shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 “Assessment” shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration or the Act.
- 1.5 “Association” shall refer to DAVENCOURT OF SPANISH FORK HOMEOWNERS ASSOCIATION, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.6 “Board of Trustees” or “Board” shall mean the entity or governing body with primary authority to manage the affairs of the Association.
- 1.7 “Board Member” shall mean a duly-qualified and elected or appointed member of the Board of Trustees.
- 1.8 “Bylaws” shall mean the bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded. The Bylaws attached as Exhibit B to this Declaration shall replace any previous bylaw provisions contained in the 1998 Declaration, 2000 Declaration, and 2003 Declaration.
- 1.9 “Common Area” shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Project, except: (1) to the extent any fixture, structure, or other area is within the boundaries of or a part of a Unit; and (2) any public roadways in or running along the Project. Except as identified on the Plat or in this Declaration, Common Area includes, but is not limited to all:
- (a) Real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple;
 - (b) Fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water;
 - (c) Applicable apparatus and installations clearly intended and existing for common use;
 - (d) Limited Common Areas; and
 - (e) Other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.10 “Common Expenses” shall mean the actual and estimated costs for: (1) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (2) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association, if any; (3) management and

administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (4) utilities (other than utilities that are separately metered and charged to the Units), extermination, security, gardening, landscaping, snow removal, and other related services; (5) insurance and bonds required or allowed by this Declaration; (6) the establishment of reserves; (7) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (8) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

- 1.11 “Declaration” shall mean this Declaration, including all attached exhibits other than any Bylaws, which are incorporated by reference, and any and all amendments to this Declaration.
- 1.12 “Electronic transmission” or “electronically transmitted” means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.13 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Project. The hierarchy of the Governing Documents shall be that set forth in Section 228 of the Act.
- 1.14 “Lender” shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.15 “Limited Common Area” shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of one or more Owners to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.16 “Manager” shall mean any entity or Person engaged by the Board of Trustees to manage the Project.
- 1.17 “Occupant” shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit, at least monthly, if it is left unoccupied).
- 1.18 “Owner” shall mean the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the County Recorder of Utah County, Utah. Owner shall not include a Lender or trustee for a deed of trust.

- 1.19 “Person” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.
- 1.20 “Plat” shall mean the record of a survey map or maps of the Project, recorded in the records of the County Recorder of Utah County, Utah, including Plat A, Plat B, and Plat C, and all amendments and supplements thereto.
- 1.21 “Project” shall mean the Property and all structures and improvements thereon including the Units, the Common Area, and the Limited Common Areas.
- 1.22 “Property” shall mean the real property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.23 “Rules” shall mean and refer to the Rules adopted by the Association.
- 1.24 “Single-Family Detached Unit” shall mean and refer to the Unit identified as number “8” on Plat C, and more particularly identified as Parcel No. 37-201-0008. The Single-Family Detached Unit existed at the time the remaining Units of the Project were platted and constructed. This Declaration allocates specific maintenance and insurance obligations to the Single-Family Detached Unit that do not apply to the other Units.
- 1.25 “Terms and Conditions” shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.26 “Unit” shall mean and refer to any one of the individual townhomes in the Project, together with the adjacent land to each townhome identified as privately-owned area on the Plat, and which may be designated on the Plat as a “Lot” or a “Unit.” Except where the context specifically requires otherwise, the Act’s use of the term “Lot” shall mean and refer to a Unit. Additionally, except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest appurtenant to such Unit.

**ARTICLE 2
THE PROJECT**

- 2.1 Binding Effect of Governing Documents. The Association and its Owners hereby confirm that the Property is part of the Project and declare and agree that the Project, and all of the Units, shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land, and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 Nature of the Project. The Project is a townhome style community that contains a total of fifty-nine (59) Units, consisting of fifty-nine (58) townhome style Units and the one (1) Single-Family Detached Unit, in seventeen (17) separate buildings. The Project includes roadways, covered and non-covered parking areas, and open space. The open

space includes a playground area. The Project is not a cooperative and is not a condominium.

- 2.3 Project Name. The Project is named “Davencourt of Spanish Fork Townhomes” and is a planned unit development located entirely in Spanish Fork, Utah County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat. The name used by the Association for the Project may be changed through amendments to this Declaration or the Plat.
- 2.4 Identification of Units. All of the Units are referenced specifically and identified by location on the Plat.
- 2.5 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporation and Commercial Code, or any successor division or department of the State of Utah.

**ARTICLE 3
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA,
AND ALLOCATED INTERESTS**

- 3.1 The Unit.
 - (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
 - (b) Subject to further specification herein, each Unit consists generally of all structures on or within the boundary of the Unit, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Unit, also known as a party wall, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (a) is part of and an integral part of the Unit structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Unit structure); or (b) was constructed as part of the original construction of the Unit.
 - (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit, shall be part of the Unit.
 - (d) All exterior and interior doors, door jams, windows, window sills, window frames and all components therein, in or on the boundary of any Unit are part of the Unit. Skylights, if any, and all installations related thereto are part of the Unit.
 - (e) All fenced in areas adjacent to the Unit.
 - (f) The Single-Family Detached Unit consists of the entire structure, including the garage located within the house structure, which is part of the Unit to the same extent as described above for the interior of the Unit.
 - (g) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be

the first installation of foundations, framing, and wallboard. If the Board determines (in its sole discretion) that the then current construction varies from the original as-built construction, then the Association may, at the expense of the Association or the Owner, in the Board's discretion, require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Board shall consider: (1) whether the Owner caused the nonconforming construction; (2) whether the Owner sought or obtained Board approval for any nonconforming construction regardless of whether any such approval was valid or not; (3) whether other Owners engaged in similar nonconforming construction; (4) the overall culpability of the Owner as it relates to the nonconforming construction; and (5) the reason for the nonconforming construction.

- 3.2 Common Area. Unless otherwise provided in this Declaration, as it may be amended from time to time, the Common Area shall be owned by the Association.
- 3.3 Limited Common Area.
- (a) Specific Identification of Limited Common Areas. The Limited Common Area consists of the covered parking stall areas identified on the Plat as Limited Common Area. Each Unit, except the Single-Family Detached Unit which has a garage, is assigned one covered parking stall and one uncovered parking stall. The Association may install signs, identify in the Rules, or take other actions as necessary to identify and maintain a record of the parking stall assignments for each Unit. No roadways are Limited Common Areas.
- (b) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
- 3.4 Allocated Interest of Each Unit. Unless otherwise provided in this Declaration, each Unit shall have an equal Allocated Interest. Notwithstanding the foregoing, for Assessment and calculation of Common Expenses liability purposes, each Unit except the Single-Family Detached Unit shall have an Allocated Interest equal to 1.0035 and the Single-Family Detached Unit shall have an Allocated Interest of 0.797. The Single-Family Detached Unit has different maintenance and insurance obligations than that of the other Units and, therefore, the Single-Family Detached Unit pays a lower amount of Assessments than the other Units. Any other difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest. For voting purposes, each Unit shall have an equal Allocated Interest, meaning that there shall be one vote per Unit. The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve.
- 3.5 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application of controlling law.

ARTICLE 4
MAINTENANCE, REMODELING, AND UTILITIES

- 4.1 Owner Responsibility for Maintenance of Units and Limited Common Areas.
- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following:
- (1) All interior and exterior doors, including thresholds, door jams, hinges, doorbells, chimes, handles, and locks.
 - (2) All interior paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls.
 - (3) All drywall, wallboard, or similarly functioning materials within the Unit.
 - (4) All framing, insulation, and other materials associated with interior nonbearing walls.
 - (5) All windows, window sills (including the regular cleaning and clearing of clogged weep holes), window screens, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass. (The Association may elect to arrange and pay for the cleaning of exterior windows as a common expense, may require the Owners to pay a particular person or company to clean on a schedule determined by the Association, or may arrange for cleaning of windows and pass through the specific expenses associated with each particular Unit as an expense associated with that Unit.)
 - (6) All sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within an Owner's Unit.
 - (7) All plywood decking and similar materials on interior floors.
 - (8) Any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting particular to a porch or patio but not including exterior lighting attached to a Unit for the purpose of lighting Common Area outside of those areas), fans, plumbing fixtures, including plumbing pipes and lines, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, wiring to such units, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations.
 - (9) Any deck, patio, and retaining wall adjacent to the Unit or located within the boundaries of the Unit as identified on the Plat.
 - (10) All landscaping and sprinkler systems located within the fenced-in areas adjacent to the Unit or located within the boundaries of the Unit as identified on the Plat.

- (11) The paint and any other decorative finish inside the opening to any skylight.
- (12) Any modifications or repairs to the Unit as necessary to mitigate any radon gas or other naturally occurring environmental contaminate.
- (b) The Owner of the Single-Family Detached Unit shall further be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following:
 - (1) The exterior of the Unit, including, without limitation, the roof and rain gutters, foundation, concrete pad within the garage, the garage doors and garage door openers, doors, windows, and window wells; and
 - (2) The driveway that serves only the Single-Family Detached Unit.
- (c) The Owner of each Unit shall further be responsible for keeping the Unit, and all decks, porches, patios, fences, Limited Common Areas and exterior areas of a Unit associated with an Owner's Unit in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed, or placed on the exterior of any Unit, which may include a prohibition on leaving, installing, or storing any items or animals in such places.

4.2 Association Responsibility for Maintenance of Units and Limited Common Areas. Unless otherwise set forth in this Declaration related to the Single-Family Detached Unit or the Owners of the remaining Units, the Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the following:

- (a) All foundations, except the foundation of the Single-Family Detached Unit; (not including concrete pads within a dwelling);
- (b) All framing and structural components in ceilings and floors (not including concrete pads or plywood decking);
- (c) All framing, structural components, and insulation in exterior and bearing walls;
- (d) Except as otherwise provided herein, all framing, structural components, and insulation located exterior to any drywall or similar materials on the interior of the Units;
- (e) The outside exterior surfaces of the dwelling and all components that are a part of the outside surface of all exterior walls and outside surfaces of the dwelling, except as otherwise specifically assigned in this Declaration to the Owner for maintenance and repair;
- (f) The framing, structural components, and insulation in any walls common to, or shared by, two (2) Units;
- (g) The fences around the boundaries of each Unit and boundaries of the Project;
- (h) The roofs, rain gutters, and window wells of the Units;
- (i) All utility lines and plumbing lines to the extent that they serve more than one (1) Unit;

- (j) All Common Area landscaping, including the sprinklers located outside of the fenced-in areas adjacent to the Units; and
- (k) All Common Area and Limited Common Area.

4.3

Modifications to Units.

- (a) Without the prior approval of the Association, an Owner shall not make any alterations, repairs, or modifications to any part of the exterior of a building, including any area that the Owner is obligated to maintain such as windows, light fixtures, skylights, and exterior doors. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials or aesthetics requirements or other standards.
- (b) Except as otherwise provided herein, an Owner may complete any maintenance or upgrades to the interior of a Unit not otherwise defined as remodeling, without prior approval of the Association.
- (c) No Unit shall be joined with another Unit, nor shall any partition wall be removed between Units.
- (d) Remodeling.
 - (1) For the purpose of this Declaration, remodeling shall include, but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, ceramic tile or hardwood floors; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling.
 - (2) Before beginning any remodeling or deviating from a previously approved remodeling plan, the Owner shall:
 - (i) notify the Association and provide the following: (1) a written description of the proposed remodeling; (2) a description of how any debris or materials removed will be disposed of; (3) the date the remodeling will begin; (4) the date the remodeling is expected to be completed; (5) the names, contractor's license numbers, proof of current workers' compensation insurance, and proof of current liability insurance, of all contractors and other persons expected or required to perform work in the remodeling; (6) any expected nuisance that the remodeling shall create such as noise or dust; and (7) the Owner's proposal for mitigating any expected nuisance; and
 - (ii) wait to begin the remodeling until the Association gives written approval. If the Association does not respond within fifteen (15) days of a notice of remodeling, the Owner may complete the remodeling consistent with the information provided in the notice.

The Association may respond by approving the request, requesting additional information, or denying the request if the notice is not complete, or if the remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information or denies the request, the Owner shall not begin the remodeling.

- (3) Without prior written permission of the Board and regardless of whether any response from the Association is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (1) any use of the Common Area or any roadways for staging, storage, assembly, or construction; (2) any nuisance as established by law or by the Governing Documents; (3) any blocking of the Common Area or roadways by vehicles, materials, or persons; or (4) any use of any Association garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling.
- (4) The Board shall have no authority to approve of any remodeling inconsistent with the Terms and Conditions that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise provided herein), or that would cause unsafe conditions or a legal nuisance.
- (e) All remodeling and other repairs and modifications to Units, after the initial construction of the Units, must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.
- (f) If the Board determines in its discretion that plans or drawings need to be provided and reviewed by an architect and/or engineer due to the scope or nature of the remodeling, a fee not to exceed the actual cost of the review may be charged to the Owner.

4.4 Maintenance of and Modifications to Common Area, Limited Common Area, and Units.

- (a) Maintenance of Common Area. Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area, subject to the obligation set forth below to get approvals for capital improvements to the Project. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.
- (b) Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

- (1) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
 - (2) Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding at least thirty percent (30%) of the Allocated Interests in the Association and must be approved of by the Board. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners and the written consent of Owners holding fifty percent (50%) of Allocated Interest in the Association.
 - (3) Notwithstanding the provisions of Section 4.4(b)(1) and (2), above, the Association may, at any time and in its sole discretion, designate portions of the Common Area as parking areas, even if such areas are not so designated on the Plat. Designating portions of the Common Area as parking areas or spaces shall not constitute a material alteration to the nature of the Project.
- (c) **Snow Removal.** The Association shall be responsible for removing snow from all Common Area on the Plat. Owners shall be responsible for removing snow from any privately-owned Unit area, including porches or patios. The Association shall not be under any obligation to remove snow from any public streets adjacent to the Association.
 - (d) **Standard of Maintenance.** The Board shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area, Limited Common Area, and the portions of the Units for which the Association has maintenance responsibility, so long as those areas are maintained in the best interests of the Owners.
 - (e) **Assessment of Maintenance Expenses to Specific Owners.** Subject to the provisions related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by an Owner or an Occupant, the Association shall assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.

4.5 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Unit or Limited Common Area as required in the Governing Documents; or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Project, then the Association may take any action allowed for a failure to comply with this Declaration, and may give

written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required, and requesting that the same be carried out within a period of not more than thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and assessing the Owner for all costs associated therewith.

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

ARTICLE 5 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 5.1 Organization of Association. The Association shall serve as the organizational body for all Owners.
- 5.2 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 Legal Organization. The Association may be organized as a nonprofit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in this Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 5.4 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one (1) Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.5 Availability of Documents. The Association shall keep and make available within five (5) calendar days to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents, most recent approved minutes, and the most recent budget and financial statement.
- (a) The Association shall make available other minutes, books, records and financial statements related to the operations of the Association. The term “available” as used in this subsection shall mean available for inspection and copying within thirty (30) days after receiving a proper request, unless a shorter time period is

required by law, during normal business hours and under other reasonable conditions. The Association shall have the right to redact information in accordance with the Act prior to making any Association minutes, books, records and financial statements available to an Owner. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to the inspection and copying of Association records. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information, including copying costs and the cost of an Association employee's, manager's, or other agent's time.

5.6 Board of Trustees. The governing body of the Association shall be the Board of Trustees elected pursuant to the Bylaws. The Board shall consist of three (3) to seven (7) members. Except as otherwise provided in this Declaration or the Articles of Incorporation, the Board shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in this Declaration, Articles of Incorporation, or by applicable law, no Owner or group of Owners, other than the Board, may direct the actions of the Association.

5.7 Board Members.

(a) Qualification.

- (1) To be on the Board, a Person must be an Owner, or the spouse of an Owner, and over the age of eighteen (18) years old. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a Board Member.
- (2) As further detailed and explained in the Bylaws, at least two (2) Board Members must, at all times, have as their primary residence a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Board Members.

(b) Reasonable Ongoing Requirements for Board Members. The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members. Any Bylaw requirements adopted pursuant to this section shall not apply to any Board Members on the Board during the current term of the Board Member being served when they are adopted.

5.8 Limitation on Authority of Owners, Board Members, Officers, and the Board.

(a) Except as provided herein, or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to, and may not, act on behalf of the Association or the Board to:

- (1) Amend or terminate any Governing Document;
- (2) Elect or remove Board Members;
- (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board Members or of the Board; or
- (4) Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

5.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

5.10 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

ARTICLE 6

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

6.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided for by law:

- (a) Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association.
- (b) Paying Expenses. The Association shall provide for the payment of Association expenses.
- (c) Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- (d) Entering Units. After having given the appropriate notice as required in Article 17, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Unit to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
- (e) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so

long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- (f) **Hiring Managers and Delegating Responsibilities.** The Association shall hire a Manager to assist the Board in the management and operation of the Project, and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. The Board has no authority to enter into any management agreement or contract inconsistent with the terms of these Governing Documents or that provides for any termination fee or requirement for termination "for cause."
- (g) **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- (h) **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (i) **Discretion in Enforcement.**
 - (1) Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - (2) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
 - (i) whether to compromise a claim made by or against the Board or the Association; and
 - (ii) whether to pursue a claim for an unpaid Assessment.
 - (3) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:
 - (i) the Association's legal position does not justify taking any or further enforcement action;

- (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law;
 - (iii) a technical violation has or may have occurred, and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or
 - (iv) it is not in the Association's best interest to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (4) Subject to Subsection 6.1(i)(5), if the Board decides under Subsection 6.1(i)(2)(ii) to forego enforcement, the Association is not prevented from later taking enforcement action.
- (5) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- (j) Reserve Fund. The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 19 of this Declaration.
- (k) Conflicting Interest Transaction with Service Providers and Vendors. The Association and its Board Members shall comply with the disclosure and other provisions of Utah Code Ann. § 16-6a-825 regarding any conflicting interest transaction when the Association is contracting with service providers and vendors. As used in Utah Code Ann. § 16-6a-825, the term “conflicting interest transaction” includes a contract, transaction, or other financial relationship between the Association and: one of its Board Members; a relative of a Board Member; or another entity in which a Board Member is a director or officer or has a financial interest.
- (l) Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing, and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two (2) weeks’ notice of the hearing to the Owners; and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- (m) Annual Meeting. The Association shall arrange for and conduct an annual meeting at least once annually as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (n) Payoff Information Fees. The Association is specifically authorized to establish a fee of fifty dollars (\$50.00) to provide payoff information related to the transfer,

refinance, or closing of a Unit. The Board may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.

- (o) Reinvestment Covenant upon Sale or Transfer of Unit. The Board may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a “Reinvestment Fee”) as provided for in Utah Code Ann. § 57-1-46, in an amount up to one half of one percent (.5%) of the value of the Unit at the time of the transfer. A transfer is any change in the ownership of the Unit as reflected in the office of the county recorder, regardless of whether it is pursuant to the sale of a Unit or not. If a fee is required, the amount shall be set forth by the Board in the Rules.
 - (1) The value of the Unit for purposes of this section shall be the higher of:
 - (1) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; (2) the purchase price paid for the Unit related to the transfer; or (3) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board) and paid for by the Association, using an appraiser selected by the transferee of the Property from a list of ten (10) appraisers selected by the Association. All or a portion of the reinvestment fee shall be used to pay the Association’s costs directly related to the transfer of the Unit, not to exceed two hundred fifty dollars (\$250.00).
 - (2) The reinvestment fee may not be enforced against: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (5) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed two hundred fifty dollars (\$250.00).
 - (3) The Association’s Board shall set the amount of the reinvestment fee through a resolution. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and Rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.
- (p) Bulk Services Agreements. The Association shall have the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television,

internet, telephone, or other similar services for all of the Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and, in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

**ARTICLE 7
BUDGETS & ASSESSMENTS**

- 7.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 Budget and Regular Assessments.
- (a) The Board is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Board may revise that budget from time-to-time as it deems appropriate.
 - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget) which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Board deems appropriate.
 - (c) The Board shall send a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
 - (d) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Allocated Interest for each Unit.
 - (e) Unless more than fifty percent (50%) of the Allocated Interest of the Association votes to increase the regular Assessment by a greater amount, the maximum amount that the regular Assessments may be increased each calendar year by the Board is fifteen percent (15%) above the prior year's total annual amount of the regular and special Assessments.
- 7.3 Payment of Regular Assessments. Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 Adjustments to Regular Assessments. In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board, each Owner shall, thereafter, pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 7.5 Personal Obligation for Assessment. Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or

not it shall be so expressed in any such deed, or other instrument, and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner, and with the Association, to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due.

- 7.6 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board.
- 7.7 Percentage Assessments. Except as otherwise provided herein, all Assessments, other than special Assessments to individual Units, shall be allocated to all Owners based on the Allocated Interest of each Unit as set forth in Section 3.4.
- 7.8 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration, and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and when they are late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner, or an error in any such statement, other than a certificate of payment described in Section 7.9, shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.9 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments, or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid, and the amount of delinquency, if any. A reasonable charge of fifty dollars (\$50.00) or such other amount as allowed by law and provided for in the Rules may be collected by the Board for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association, acting through its Board, is authorized to set and collect special Assessments pay for any Common Expenses; however, the Board may only authorize special Assessments up to a combined fifteen percent (15%) of the current annual Assessment amount during any calendar year. For any special Assessment, or combination of special Assessments, that would exceed fifteen percent (15%) of the current annual Assessment, such special Assessment must be approved by at least fifty percent (50%) of the Allocated Interest of the Association either through a vote or written consent. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

- 7.11 Special Assessments to Individual Units. Special Assessments may be levied by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner’s Unit into compliance with the provisions of the Governing Documents;
 - (b) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest; and
 - (d) Attorney’s fees, costs and other expenses relating to any of the above.
- 7.12 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Unit, at the discretion of the Board.
- 7.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.14 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.15 Application of Payments. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.16 Administration of Assessment Funds. The Association shall keep all Assessment-generated funds in an account or accounts in the name of the Association. The Association shall not commingle Assessment-generated funds with the funds of any other person.

ARTICLE 8
NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY
OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 8.1 Delinquency. Assessments not paid within the time required shall be deemed delinquent. Whenever an Assessment is delinquent, the Board may, at its discretion, invoke any or all of the remedies granted in this Article 8.

- 8.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: (1) monthly Assessments shall be due and payable on the first (1st) of the month, and late if not received by the tenth (10th) of that month; (2) late fees shall be twenty-five dollars (\$25.00) for each month that an Owner's account has an unpaid balance after the due date; (3) in addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at one and one-half percent (1.5%) per month, compounded monthly; and (4) the Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable charge imposed by a Manager related to collections, as the Board may establish in the Rules.
- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this Section 8.3 is separate and distinct from any lien rights associated with the Unit.
- 8.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, interest, collection charges, late fees, fines, attorney fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit with the exception of: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 8.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one (1) remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will, thereafter, be added to the delinquent amount (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring an action of law or lien foreclosure against such Owner or Owners for the collection of delinquent Assessments.

- 8.6 Homestead Waiver. Each Owner acknowledges that Utah Code § 57-8a-301 provides that the Association's lien is not subject to Utah's homestead exemption. Moreover, each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time-to-time hereafter.
- 8.7 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to receive a utility service paid for by the Owner as a Common Expense; and (2) access to recreational facilities.
- 8.8 Requiring Tenant to Pay Rent to Association. Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late.
- 8.9 Attorney Fees Incurred as a Result of a Default. In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (7) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary those related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 8.10 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure, it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including, but not limited to, obligations to pay Assessments or maintain the Unit.

ARTICLE 9
PROPERTY RIGHTS IN UNITS AND COMMON AREA

- 9.1 General Easements to Common Area and Units.
- (a) Subject to all other terms of the Governing Documents, each Owner shall have an equal, undivided interest, right, and easement of use and enjoyment in and to the

Common Area, except as it relates to any areas that exclusively serve one (1) Unit or that exclusively serve two (2) or more Units, which shall be Limited Common Area for the exclusive use of the Owners and Occupants of the Unit or Units to which they are appurtenant. Each Owner shall have an unrestricted and nonexclusive right of ingress or egress to and from the Owner's Unit over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Board.

- (b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area, including repairs to fences, and those portions of the Unit that the Association is responsible for maintaining which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.

9.2 Public Utilities. Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Units, or Unit Owners in the Project, are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over, or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way, and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agrees to execute promptly all such documents and instruments, and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.

- 9.3 Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the structure.
- 9.4 Limitation on Easement—Suspension of Owner’s Rights. An Owner’s equal, undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to suspend the Owner’s right to the use of any recreational facilities included in the Common Area: (1) for any period during which an Assessment on such Owner’s Unit remains unpaid; (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (3) for successive sixty (60) day periods, if any such infraction is not corrected during any prior sixty (60) day suspension period;
 - (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access, and to have rights of ingress and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 9.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project, and each Owner and Occupant in such Owner’s Unit acknowledges, and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

**ARTICLE 10
USE LIMITATIONS AND CONDITIONS**

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code § 57-8a-218 are hereby modified not to apply to the Association.
- 10.2 Signs. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules. “Signs” shall include any type of object including, but not limited to, flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, or window signs used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or

Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

- 10.4 Smoking. No Person may smoke within twenty-five (25) feet of any building, structure, or playground area in the Project. It shall be a nuisance and prohibited under Section 10.3 to permit or cause any smoke to drift or otherwise enter into another Unit. An Owner complaining of smoke or the Association responding to that complaint shall not be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project, or to any Unit, to prevent drifting smoke from entering into that Unit or onto any patio or balcony associated with that Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or its Limited Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking.
- 10.5 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project, or used therein, unless it is approved by the Board.
- 10.6 Parking. Unless otherwise permitted by the Association in the Rules, and except for “customary parking” and “temporary parking,” as permitted by this Section 10.6, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the parking garage or Limited Common Area for each respective Unit. “Temporary parking” shall mean parking on roadways of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants, or for the parking of trailers for the purpose of loading and unloading. Visitor parking stalls are for visitors only and may not be used as an additional parking stall by Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, without limitation: (1) the right to remove or cause to be removed any vehicles that are improperly parked; (2) restrictions on the type and condition of vehicles in any customary or temporary parking; (3) restrictions on the time period and duration of temporary parking; and (4) the Assessment of fines to Owners who violate the Rules, or Owners associated with people who violate such Rules.
- 10.7 External Fixtures. To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Board. Notwithstanding the foregoing, an Owner may, at his or her own cost, install external fixtures related to solar power, provided that the Board

approves the location of any such external fixture and subject to Rules adopted by the Board related to solar power and such external fixtures.

- 10.8 Window Covers. The Board may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.
- 10.9 External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited. If permitted, external laundering and drying of clothing and other items shall be permitted only in Limited Common Areas to the rear of Units.
- 10.10 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.11 Repairs. No repairs of any detached machinery, equipment, or fixtures, including, without limitation, motor vehicles, shall be made within the Project except as may be permitted by the Board in the Rules.
- 10.12 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly and promptly disposed.
- 10.13 Animals. Animals may be kept in the Project in accordance with the type and number allowed by the ordinance of regulations of Spanish Fork City. The Board may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration, including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants of Units that have animals, the use of leashes, and noise and barking limitations. All animals are subject to the Rules adopted by the Board. All fecal matter of animals shall be immediately cleaned-up on, in, and around the Project, and it shall be the responsibility of the animal's owner to clean-up such fecal matter.
- 10.14 Landscape Maintenance. Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping in the Project without the written approval of the Board.
- 10.15 Floor Load. There shall be no floor load in excess of the weight for which the Unit was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Owner and approved in writing by the Board. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit.
- 10.16 Residential Occupancy.
- (a) No trade or business may be conducted in or from any Unit unless:

- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
 - (2) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
 - (3) the business activity does not involve Persons coming onto the Project who do not reside within the Project, or solicitation of Occupants or Owners of the Project;
 - (4) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;
 - (5) the business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
 - (6) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
 - (7) the business activity will not result in the increase of the cost of any of the Association's insurance;
 - (8) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
 - (9) the Board's ongoing requests for information related to the business as necessary to determine compliance with this section are responded to fully and completely.
- (b) No Units may be used as a timeshare property.
- (c) Except as provided in Section 10.16(a), no Unit may be used for any purpose other than a residential purpose.

10.17 No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions. No Unit shall be split, subdivided, separated or timeshared into two (2) or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one (1) Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section 10.17 shall be null, void, and of no legal effect.

10.18 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights,

storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, and other work that in any way alters the exterior appearance of the Property. The Board, or an architectural control committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance, preservation, and enhancement of Property values.

- (a) The Board may establish, pursuant to the procedures set forth in the Bylaws, a three (3) member Architectural Control Committee (the “ACC”), the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. If such an ACC is not appointed and/or the ACC fails to fulfill its duties, the Board will act in place of the ACC with all related powers and authority.
- (b) Any plans or specifications submitted to the Board or the ACC, if the Board has established an ACC, shall be approved or disapproved by the Board or the ACC within thirty (30) days after submission; provided, however, that the plans and specifications for any changes, remodeling, replacement, or constructions are complete when submitted to the Board or the ACC. The Board or the ACC, in its sole discretion, may determine whether the plans or specifications are complete and sufficient enough for a decision to be rendered and may request that the Owner submit additional information. The deadline for the Board or the ACC to approve or disapprove the plans shall not commence until the Owner provides the additional information requested by the Board or the ACC. In the event that the Board or the ACC fails to take any action and make a decision by the expiration of the thirty (30) days, the Owner’s plans and specifications will be deemed approved, except in those respects that such plans and specifications are not in conformity with the provisions of the Association’s Governing Documents, state or federal laws, or the ordinances and code of Spanish Fork.
- (c) The Association may charge the Owner a fee for the actual costs incurred by the Association related to the review of the plans and specifications. Such costs may include those incurred by the Association to retain any architects, engineers, attorneys, or other consultants necessary to advise the Association, the Board, or the ACC concerning any aspect of the plans and specifications submitted by the Owner. Such charge may be levied as an Assessment against the individual Owner.

10.19 Lighting. Exterior lighting fixtures and walkway/landscaping lights shall be allowed only to the extent approved by the Board.

10.20 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Board determines, in its discretion and by unanimous vote: (1) either: (a) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant; or (b) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial

adverse effect on the Owners or Occupants of the Project, and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every Board Member of the then-existing Board. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears, after reasonable investigation under the circumstances, that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner, either voluntarily or involuntarily, through foreclosure.

10.21 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate for/to the maintenance of a Unit or the Project.
- (b) Each Owner shall indemnify, defend and hold the Association, and each and every other Owner, harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.21 shall survive any subsequent sale by an indemnifying Owner.
- (c) As used in this Section 10.21, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.21, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

**ARTICLE 11
INSURANCE**

- 11.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration.

Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies.

- 11.2 Annual Insurance Report. Not later than sixty (60) days prior to the annual meeting of the Association, the Board may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage and, if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “**NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;**” and (4) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “**NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.**” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association, and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

11.3 Property Insurance.

(a) Hazard Insurance.

- (1) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Common Area and all buildings including all Units, fixtures, and building service equipment. However, unless otherwise determined by the Board, the Owner of the Single-Family Detached Unit is required to obtain an insurance policy for property insurance to cover the Single-Family Detached Unit and, therefore, the Association does not need to include coverage from the Single-Family Detached Unit in the Association’s blanket property insurance policy.
- (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any

Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.

- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all other perils normally covered by “special form” property coverage.
 - (iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the Property shall be determined by using methods generally accepted in the insurance industry.
 - (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable Property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
 - (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) “Inflation Guard Endorsement,” if available; (2) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “Equipment Breakdown,” if the Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000.00), or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (1) the Association's policy provides primary insurance coverage; and

- (2) notwithstanding Subsection 11.3(b)(1) and subject to Subsection 11.3(b)(3):
 - (i) the Owner is responsible for the Association's policy deductible; and
 - (ii) building property coverage, often referred to as coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (3) (i) As used in this Subsection (3):
 - (A) "Covered Loss" means a loss, resulting from a single event or occurrence covered by the Association's property insurance policy;
 - (B) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit; and
 - (C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.
 - (ii) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.
 - (iii) If an Owner does not pay the amount required under Subsection (11.3)(b)(3)(ii) within thirty (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.
- (4) As provided in 11.3(a)(1), the Owner of the Single-Family Detached Unit shall obtain separate insurance to cover the Single-Family Detached Unit, and the Owner of the Single-Family Detached Unit shall be responsible for the full payment of the premium and deductible for any insurance policy. Unless otherwise required by law, if the Owner of the Single-Family Detached Unit purchases a separate insurance policy, the Association does not need to send the Owner of the Single-Family Detached Unit a notice required by 11.3(g).
- (c) Flood Insurance.
 - (1) If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that is not part of a building and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance

Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of the Insurable Property.

- (2) If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association may purchase earthquake insurance as the Board deems appropriate. If the Board elects not to purchase earthquake insurance, a vote of fifty-one percent (51%) of the Allocated Interests present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the decision not to purchase earthquake insurance is not confirmed by such a vote at the annual meeting, the Board shall purchase earthquake insurance within sixty (60) days of the annual meeting.
- (e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) Association's Right Not to Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (1) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (2) the Association is responsible for any loss to any Common Area; (3) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in Section 11.3(b)(3)(iii), recover any payments the Association makes to remediate that Unit; and (4) the Association need not tender the claim to the Association's insurer.
- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 11.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

11.4 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or

ownership of the Common Area and the Owner's 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 would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

- 11.5 Directors' and Officers' Insurance. The Association shall obtain directors' and officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the 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.
- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. 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 and the prior calendar year's highest monthly balance on all operating and reserve funds; and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board Members of the Association; (b) employees and volunteers of the Association; (c) any Manager of the Association; and (d) officers, directors, and employees of any Manager of the Association.
- 11.7 Workers' Compensation Insurance. The Board 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 may purchase workers' compensation insurance even if the Association has no employees, as the Board deems appropriate.
- 11.8 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 Lender.
- 11.9 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be 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 proceeds remaining after paying for any necessary action related to the property shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

- 11.11 Insurance Trustee. In the discretion of the Board or upon written request executed by Owners holding fifty percent (50%) of the Allocated Interests, the Board shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.12 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 to terminate an insurance policy, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 Waiver of Subrogation against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Unit Owner if an Owner resides in the Unit, and the Association’s agents and employees.
- 11.14 Right of Action. Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to Property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.15 Applicable Law. This Declaration is specifically subjecting the Association to the current insurance requirements in the Act. And 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 12
DESTRUCTION OF IMPROVEMENTS**

- 12.1 Reconstruction. In the event of partial or total destruction of a building, or buildings, or any portion of the Common Area within the Project, the Board shall promptly take the following actions:
 - (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds;

- (b) The Board, or any Insurance Trustee, if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any;
- (c) Damage to a Portion of Project Insurance Proceeds;
 - (1) If a portion of the Project for which insurance is required under this Declaration is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (1) the Project is terminated; (2) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (3) (a) Owners holding at least seventy-five percent (75%) of the Allocated Interests in the Association vote not to rebuild; and (b) each Owner of a Unit that will not be rebuilt votes not to rebuild.
 - (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.
 - (3) If the entire Project is damaged or destroyed and not repaired or replaced: (1) the Association shall use the insurance proceeds attributable to the damaged Common Areas to restore the damaged area to a condition compatible with the remainder of the Project; (2) the Association shall distribute the insurance proceeds attributable to Units and Common Areas that are not rebuilt to the Owners of Units that are not rebuilt and the lienholders; and (3) the Association shall distribute the remainder of the proceeds to all the Owners or lienholders in proportion to their Allocated Interests.
 - (4) If the Owners vote not to rebuild a Unit: (1) the Unit's Allocated Interests are automatically reallocated upon the Owner's vote as if the Unit had been condemned; and (2) the Association shall prepare, execute, and submit for recording an amendment to this Declaration reflecting that the new reallocations if the Allocated Interests for all Owners are not all equal.
- (d) If the Board in good faith determines that none of the bids submitted under this Section 12.1 reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days of the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 12.2;
- (e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored; and
- (f) The Board shall engage the services of a reputable licensed architect to advise and consult with the Board on all actions and decisions under this Section 12.

- 12.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 12.1, as soon as practicable after the same has been determined, the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt), determine not to proceed with such reconstruction, reconstruction must take place, and the Board shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- 12.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Project, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 12.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Board, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Utah County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two (2) Board Members and upon the terms and conditions provided in this Section 12.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors in a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the insurance trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Utah

County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board, prior to the commencement of construction, a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to ensure that all work, services and supplies are in conformity with the requirements of the construction contract.

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

ARTICLE 13 EMINENT DOMAIN

- 13.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to this Declaration that accomplishes any adjustment required under this Section. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

- 13.2 Partial Taking of a Unit. Except as provided in Section 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 13.3 Taking of Limited Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of, or includes, any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 13.4 Taking of Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of, or includes, any Unit or Limited Common Area, the award attributable to the taking shall be paid to the Association and the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 13.5 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.6 Priority and Power of Attorney. Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit, the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14 TERMINATION

- 14.1 Required Vote. Except as otherwise provided in Article 12 and Article 13, the Project may be terminated only by the approval of Owners holding ninety percent (90%) of the Allocated Interests.
- 14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement,

including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Utah County, Utah, and is effective only on recordation.

- 14.3 Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, provided that the contract is conditioned on the termination of the Project. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.5 Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Board. If any Owner disputes the appraised amount, they shall notify the Board of the dispute within ten (10) days of receiving notice of the value of that Owner's Unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly, with the Association's appraiser, select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.6 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purposes, including for the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

**ARTICLE 15
AMENDMENTS**

- 15.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty percent (60%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose. The vote of approval of any one (1) Owner of a Unit is sufficient, if there are multiple Owners of the Unit.
- 15.2 Scope of Amendments. This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association or, if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.
- 15.3 Execution and Effective Date of Amendments. An amendment that has been adopted, as provided herein, shall be executed by the Board, through its agent, who shall certify that the amendment has been approved and adopted, and that the procedures and requirements necessary to amend this Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Utah County, Utah.
- 15.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of Owners holding sixty percent (60%) of the Allocated Interests in the same manner as required in Section 15.1 to amend this Declaration, unless a higher percentage is required by law. Any such Plat may make material changes to the existing or prior Plat, including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of, or consented to, the change in the Plat; and (2) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 15.5 Amendment to Conform to Law. The Board may, without the approval of the Owners, amend this Declaration to conform it to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change this Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing

such as through VA, FHA, FNMA or similar programs, or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) The Association must obtain from an attorney who has a significant experience with and a regular practice in the area of Community Association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section;
- (b) The Board Members must unanimously agree to the Amendment at the time it is recorded;
- (c) The Board must provide the Owners with: (1) the proposed amendment instrument; (2) the language of this section of this Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit Owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association: (a) notifies the Owners that it intends to amend this Declaration pursuant to this section; (b) provides the Owners a right to object to the amendment within thirty (30) days; and (c) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;
- (d) Within forty-five (45) days of providing the notice and information required by this section to the Owners, unless Owners holding more than thirty percent (30%) of the Allocated Interests have objected to the amendment, the Board is authorized to sign and record the amendment; and
- (e) Having otherwise complied with all of the requirements of this section, the Board Members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interests objected after having received the notice required in this section. The amendment shall be effective upon the recording of the same in the office of the recorder of Utah County, Utah.

**ARTICLE 16
INTERPRETATION, CONSTRUCTION, AND APPLICATION
OF DECLARATION**

- 16.1 No Waiver. Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance, or on any particular occasion, shall not be deemed a waiver of such right of enforcement as to that breach, and any such future breach of the same, or any other Term and Condition.
- 16.2 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Plat, this Declaration, the Articles, the Bylaws, and then the Rules.
- 16.3 Interpretation of Declaration and Applicability of the Act. The Association intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary,

supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent legally allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

- 16.4 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options, and remedies, or any other remedy or relief that may be provided by law, simultaneously, consecutively, or alternatively.
- 16.5 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community, and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against, or strictly for or against, the Association, any Owner, or any other Person subject to their terms.
- 16.7 Applicable Law. This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of the recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law, this Declaration expressly states that such amendments shall be applicable, or unless the Association makes those amendments applicable by amendment to this Declaration.
- 16.8 Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neutral, and vice versa.
- 16.9 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable, in whole or in part, for any reason.

ARTICLE 17
NOTICE

- 17.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Association.
- (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
- (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
- (ii) by a written notice placed in the first-class U. S. mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address has been furnished, then to the street address of such Owner's Lot. Unless otherwise provided by law, such as provided in Utah Code Ann. § 16-6a-103(4), any notice so deposited in the mail will be deemed effective five (5) days after such deposit;
- (iii) by electronic transmission to an Owner which includes:
- (A) an email that is sent to an email address provided by the Owner for the purpose of Association communications or an email sent to an email address from which the Owner has communicated related to Association matters, so long as no indication is received that the email may not have been delivered. Any notice sent by email will be deemed effective when received or five (5) days after it is sent, whichever is first;
- (B) by facsimile (whether to a machine or to an electronic receiving device) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile will be deemed effective when received or five (5) days after it is sent, whichever is first; or
- (C) by text message to a phone number provided by the Owner for the purpose of Association communications or a phone number from which the Owner has communicated related to Association matters, so long as no indication is received that the text message may not have been delivered. Any notice sent by text message will be deemed effective when received or five (5) days after it is sent, whichever is first.

- (iv) By any other method that is fair and reasonable as provided for in the Community Association Act, Utah's Revised Nonprofit Corporation Act, or otherwise provided for by law.
 - (2) Notwithstanding Subsection 17.1(a)(1), the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.
 - (3) In the case of co-Owners, notice to one (1) of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one (1) notice per Unit, whether electronic or not. In case any two (2) co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class, U.S. mail to the Unit.
 - (4) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either: (1) two (2) days after the event or action for which notice was given; or (2) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (1) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
 - (2) In case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one (1) minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
 - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two (2) paragraphs, before entering a Unit, the Association shall: (1) give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Unit; (b) the date and time of the entry; (c) the purpose of entering the Unit; (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit; (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit; and (f) any other information the Association deems appropriate to include; and (2) post the written notice described above on the front or primary access door to the Unit at least seven (7) days prior to entry into the Unit.

- (c) Notice to a Lender. Notice to a Lender shall be delivered by first-class, U. S. mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
- (d) Notice to Association from an Owner.
 - (1) An Owner’s notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) by a written notice delivered personally to the Manager, which shall be effective upon delivery;
 - (ii) by a written notice placed in first-class, U. S. mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received or five (5) days after such deposit, whichever occurs first;
 - (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications; or (2) that is sent to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed effective when received or five (5) days after it is sent, whichever occurs first; or
 - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.

ARTICLE 18
ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that it intends to enforce the Term and Condition, or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

- (b) Costs. The term “costs” as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Declaration to be broader and to include costs that are not typically included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) Exception to Owner’s Liability for Fees and Costs. If, related to: (1) any dispute with an Owner; (2) any challenge by an Owner to a position of the Association on a Term and Condition; or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (a) the Association could not establish an initial position on without having incurred the fees and costs; or (b) results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner but shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to an Owner and the issues arise as part of the lawsuit.

**ARTICLE 19
RESERVES**

19.1 Requirement for Reserves. The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Board annually, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
- (b) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (c) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating money and other financial accounts and shall keep all reserve funds in an account in the name of the Association. The Board may elect to prudently invest money held in the reserves fund in a low-risk investment or high-yield saving account. The Board may determine by resolution the maximum amount of reserves that may be invested. The Association may not commingle reserve funds with the funds of any other person.
- (d) Use of Reserves. Unless a majority of the Owners vote to approve the use of reserve fund money for that purpose, the Board may not use reserve fund money for (1) daily maintenance expenses; or (2) any purpose other than the purpose for which the reserve fund was established.
- (e) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The reserve analysis shall, at a minimum, estimate the need for and appropriate amounts for a reserve fund to

accumulate money to cover the cost of repairing, replacing, and restoring Common Areas that have a useful life of three (3) years or more. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (f) **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person or Persons with: (1) experience in current building technologies; (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the Reserve Specialist (RS) designation available through the Community Association Institute (CAI), the Professional Reserve Analyst (PRA) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (g) **Disclosure and Approval at Annual Meeting.** Annually, at the annual meeting or a special meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the reserve analysis, and provide an opportunity for Owners to discuss reserves and how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.

ARTICLE 20

LEASING AND NON-OWNER OCCUPANCY

- 20.1 **Declaration and Rules Governing Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Unit shall be governed by this Article, the Rules, and procedures adopted as allowed in this Article.
- 20.2 **Definitions.** For the purpose of this Article:
 - (a) **“Non-Owner Occupied Unit” means:**
 - (1) for a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or
 - (2) for a Unit owned entirely by one (1) or more entities or trusts, the Unit is occupied by anyone other than the owners of the entity.
 - (b) **“Family Member” means:**
 - (1) the parent, sibling, or child of an Owner and that Person’s spouse and/or children; or
 - (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of: (1) a current Occupant of the Unit; or (2) the parent, child, or sibling of the current Occupant of the Unit.

- 20.3 Permissible Non-Owner Occupied Units. Subject to the requirements in Sections 20.4 and 20.5, any Unit may be leased or Non-Owner Occupied.
- 20.4 Rules and Resolutions.
- (a) Required Rules or Resolutions. The Board shall create, by Rule or resolution, procedures to:
 - (1) Determine and track the number of Non-Owner Occupied Units in the Project; and
 - (2) To ensure consistent administration and enforcement of this Article 20.
 - (b) Permitted Rules. The Board of Directors may adopt Rules requiring:
 - (1) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article 20, including requiring informational forms to be filled out by Owners and/or residents identifying non-Owner Occupants, vehicles, phone numbers, etc.;
 - (2) Reasonable fees related to the administration of leased and Non-Owner Occupied Lots, to the extent otherwise allowed by law; and
 - (3) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.
- 20.5 Requirements for Leasing and Non-Owner Occupancy. The Owners of all Units must comply with the following provisions:
- (a) Any lease or agreement for otherwise allowable non-Owner occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with this Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-Owner occupancy (whether in writing or not) does not include these provisions, they shall, nonetheless, be deemed to be part of the lease or agreement and binding on the Owner and the resident;
 - (b) If required in the Rules, or requested by the Board, a copy of any lease or other agreement for non-Owner occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board;
 - (c) A non-Owner Occupant may not occupy any Unit for transient, short-term (less than twelve (12) months), hotel, resort, vacation, or seasonal use (whether for pay or not);
 - (d) Daily and weekly occupation by non-Owner Occupants is prohibited (whether for pay or not); and
 - (e) The Owner(s) of a Unit shall be responsible for the non-Owner Occupant's or any guests' compliance with this Declaration, Bylaws, and Rules. In addition to any other remedy for noncompliance with this Declaration, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such

action, with the purpose of removing the offending non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph, and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

- 20.6 Units Exempt from the Twelve Month Lease Term Requirement. The following Unit Owners and Units are exempt from the minimum twelve (12) month lease term requirement in Subsections 20.5(a) and 20.5(c):
- (a) Unit Owner in the military for the period of the Unit Owner's deployment;
 - (b) Unit occupied by a Unit Owner's parent, child, or sibling;
 - (c) Unit Owner whose employer has relocated the Unit Owner for two (2) years or less;
 - (d) Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's governing documents; and (2) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
 - (e) Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of: (1) a current resident of the Unit, or (2) the parent, child, or sibling of the current resident of the Unit.
- 20.7 Exceptions for Family Members. If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein:
- (a) Subsections 20.5(a), 20.5(c), & 20.5(d) of Section 20.5 shall not apply to that occupancy;
 - (b) No written agreement regarding occupancy needs to be created between the Family Member(s) and the Owner; and
 - (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents and, if requested, may only be requested related to remedying or taking action as a result of such a violation.

ARTICLE 21 GENERAL PROVISIONS

- 21.1 Enforcement. Subject to reasonable compliance therewith by the Board, each Owner shall reasonably comply with the Governing Documents, as the Governing Documents may be lawfully amended from time to time, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

- 21.2 No Liability of Officials. To the fullest extent permitted by applicable law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 21.3 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area, and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association's managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act that an Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (1) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (2) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents, and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents, and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.
- 21.6 Security. The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason, including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project

acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct, and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners or Occupants, or of their personal property, as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim, and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 21.7 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a handicap (as defined by Federal law at the time the accommodation is requested) or disability (as defined by state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the buildings, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 Notification of Sale or Transfer and Reinvestment Fee. Except as otherwise limited by law, the Board may establish a reinvestment fee Assessment, from time to time, which shall be no more than one-half of one percent (0.5%) of the value of the Unit, and which shall be due and payable immediately after any sale or other transfer of any Unit. The Board shall have authority to set forth in the Rules the date, time for payment, amount, requirements for any information that is required from any transferee of any Unit upon any sale or transfer, and any other procedures or requirements related to the reinvestment fee Assessment. The reinvestment fee Assessment shall be due after the transfer.
- 21.9 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

IN WITNESS WHEREOF, the undersigned officers and directors of the Association hereby certify that the Association obtained the requisite vote of the Owners in approving and adopting this Declaration, including all exhibits hereto.

**DAVENCOURT OF SPANISH FORK
HOMEOWNERS ASSOCIATION, INC.**

Katherine L. Brown
By: Katherine L. Brown
Its: President

Klaryssa Healey
By: Klaryssa Healey
Its: Secretary

STATE OF UTAH)
:ss.

COUNTY OF UTAH)

On this 21 day of July, 2020, personally appeared before me Katherine L. Brown and Klaryssa Healey who being by me duly sworn, did say that they are the President and Secretary of Association, respectively, and are authorized to execute this this Declaration on behalf of the Association.

Dallin Larsen
NOTARY PUBLIC

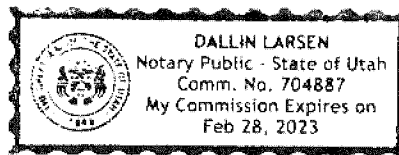


EXHIBIT A**LEGAL DESCRIPTION****Plat A
(Phase 1)**

Beginning at a point located N89°39'47"E along the Section line 218.55 feet and North 2.97 feet from the Northwest Corner of Section 20, Township 8 South, Range 3 East, Salt Lake Base & Meridian; thence N5°54'22"W 96.33 feet; thence N3°20'09"E 129.92 feet; thence N12°54'06"E 41.34 feet; thence N89°43'04"E 173.31 feet; thence S7°36'50"W 42.48 feet; thence S0°29'02"W 96.31 feet; thence N85°08'44"E 26.71 feet; thence S5°09'57"E 134.67 feet; thence S89°59'53"W 206.96 feet; thence N7°37'00"W 4.22 feet; thence S83°26'42"W 4.99 feet to the point of beginning.

Contains 1.207 acres.

Plat B

Beginning at a point located N00°17'18"W along the Section line 270.93 feet and East 400.10 feet from the Southwest Corner of Section 17, Township 8 South, Range 3 East, Salt Lake Base & Meridian; thence N89°52'32"E 134.35 feet; thence S10°44'30"W 12.02 feet; thence S79°15'34"E 14.45 feet; thence S10°44'30"W 27.97 feet; thence S79°15'34"E 166.20 feet; thence Southwesterly along the arc of an 1850.00 foot radius non-tangent curve 2.87 feet through a central angle of 0°05'20" (chord: S22°22'36"W 2.87 feet); thence Southwesterly along the arc of a 1945.00 foot radius non-tangent curve 189.16 feet through a central angle of 05°34'20" (chord: S20°29'08"W 189.08 feet); thence S89°58'50"W 11.72 feet; thence S28°12'10"W 20.23 feet; thence S89°59'53"W 183.54 feet; thence N5°09'57"W 134.67 feet; thence S85°08'44"W 26.71 feet; thence N0°29'02"E 96.31 feet; thence N7°36'50"E 42.48 feet to the point of beginning.

Contains 1.43 acres.

Plat C

SURVEYOR'S CERTIFICATE

I, DENNIS CARLISLE, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 172675 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT THE DESCRIPTION BELOW CORRECTLY DESCRIBES THE LAND SURFACE UPON WHICH WILL BE CONSTRUCTED DAVENCOURT P.R.D. PLAT "C" IN ACCORDANCE WITH THE UTAH CONDOMINIUM OWNERSHIP ACT. I FURTHER CERTIFY THAT THE RECORD OF SURVEY MAP FOR SUCH PROJECT IS ACCURATE AND COMPLIES WITH THE PROVISIONS OF SECTION 57-8-13 (1) OF THE UTAH CONDO ASSOCIATION

BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED N00°17'18"W ALONG THE SECTION LINE 270.09 FEET AND EAST 228.81 FEET FROM THE SOUTHWEST CORNER OF SECTION 17, T8S, R3E, S.L.B. & M.; THENCE AS FOLLOWS:

| COURSE | DISTANCE | REMARKS |
|--------------|----------|---|
| ALONG AN ARC | L-201.76 | R- 566.62 Δ - 20°24'05" CH- N23°38'24"E 200.69 |
| N31°13'04"E | 86.49 | |
| N89°14'34"E | 532.12 | ALONG SOUTH LINE OF WILLOW BEND "A" |
| ALONG AN ARC | L-383.26 | R-1850.00 Δ - 11°52'11" CH- S28°21'21"W 382.57 |
| N79°15'34"W | 166.20 | ALONG DAVENCOURT "B" |
| N10°44'30"E | 27.97 | ALONG DAVENCOURT "B" |
| N79°15'34"W | 14.45 | ALONG DAVENCOURT "B" |
| N10°44'30"E | 12.02 | ALONG DAVENCOURT "B" |
| S89°52'32"W | 134.35 | TO NORTHEAST CORNER OF DAVENCOURT "A" |
| S89°43'04"W | 171.29 | ALONG DAVENCOURT "A" |
| | | TO THE POINT OF BEGINNING |
| | | CONTAINING: 3.36 ACRES |
| | | |
| | | |
| | | |
| | | |

Parcel Numbers**Phase A**

| | |
|-------------|-------------|
| 37-130-0001 | 37-130-0010 |
| 37-130-0002 | 37-130-0011 |
| 37-130-0003 | 37-130-0012 |
| 37-130-0004 | 37-130-0013 |
| 37-130-0005 | 37-130-0014 |
| 37-130-0006 | 37-130-0015 |
| 37-130-0007 | 37-130-0016 |
| 37-130-0008 | 37-130-0850 |
| 37-130-0009 | |

Phase B

| | |
|-------------|-------------|
| 37-146-0001 | 37-146-0008 |
| 37-146-0002 | 37-146-0009 |
| 37-146-0003 | 37-146-0010 |
| 37-146-0004 | 37-146-0011 |
| 37-146-0005 | 37-146-0012 |
| 37-146-0006 | 37-146-0013 |
| 37-146-0007 | |

Phase C

| | |
|-------------|-------------|
| 37-201-0001 | 37-201-0022 |
| 37-201-0002 | 37-201-0023 |
| 37-201-0003 | 37-201-0024 |
| 37-201-0004 | 37-201-0025 |
| 37-201-0005 | 37-201-0026 |
| 37-201-0006 | 37-201-0027 |
| 37-201-0007 | 37-201-0028 |
| 37-201-0008 | 37-201-0029 |
| 37-201-0009 | 37-201-0030 |
| 37-201-0010 | 37-201-0031 |
| 37-201-0011 | 37-201-0032 |
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EXHIBIT B

**BYLAWS
FOR
DAVENCOURT OF
SPANISH FORK HOMEOWNERS
ASSOCIATION**

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**BYLAWS
OF
DAVENCOURT OF SPANISH FORK
HOMEOWNERS ASSOCIATION**

These Bylaws are hereby adopted and established as the Bylaws of Davencourt of Spanish Fork Homeowners Association (the “Association”). These Bylaws replace and supersede any previous bylaws of the Association. These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I
DEFINITIONS**

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions for Davencourt of Spanish Fork Townhomes (the “Declaration”), as amended, shall have the same defined meanings when used in these Bylaws.
- 1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II
OWNERS**

- 2.1 Annual Meetings.
 - (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
 - (b) Date and Time. Unless changed by the Board of Trustees, the annual meeting of Owners shall be held in September of each year. The Board of Trustees may from time to time change the date and time for the annual meeting of the Owners.
 - (c) Purpose. The annual meeting shall be held for the following purposes:
 - (1) Electing members of the Board;
 - (2) Discussing the most recent financial report(s), budget statement, and reserve study;
 - (3) A review and discussion of the Rules;
 - (4) Discussing insurance issues and coverage; and
 - (5) Transacting such other business as may properly come before the meeting.
 - (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Board at a regular Board meeting after the annual meeting. The minutes of any Annual Meeting, not previously approved, shall be approved by a majority of the Owners in attendance at the following Annual Meeting.
 - (e) Election of Board Members. If the election of the Board Members cannot be held on the day designated for the annual meeting of the Owners, or at any

adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Allocated Interest of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 **Place of Meetings.** The Board may designate the office of the Manager or any place within twenty-five (25) miles of the Project as the place of meeting for any annual or special meeting.

2.4 **Notice of Meetings.** The Board shall cause notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30) nor less than ten (10) days prior to the meeting.

2.5 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 **Quorum.** At any meeting of the Owners, the presence of Owners holding, or holders of proxies or ballots entitled to cast, more than twenty-five percent (25%) of the Allocated Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than twenty-four (24) hours at which time the Owners present in person and by proxy shall constitute a quorum. In the case of any postponement, no notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting and an electronic notification with the new meeting time, date and location to those Owners who have previously provided an email or other electronic means to the Association for notice purposes.

2.7 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the

Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or person who has been authorized by the Association to accept proxies at the meeting.

- 2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as provided in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a different proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporation Act. The election of Board Members shall be by secret ballot. When more than one (1) Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two (2) conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit on the issue at hand but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 **Ballots and Written Consent.** The Association may utilize written consents and ballots consistent with the requirements of the Utah Revised Nonprofit Corporation Act.
- 2.10 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other electronic means of Owner voting and meetings, including those provisions allowed under Utah's Uniform Electronic Transactions Act, to the extent not prohibited by the Community Association Act and the Utah Revised Nonprofit Corporation Act.
- 2.11 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum: (a) the identification of the persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be sent to all Owners within thirty (30) days of the annual meeting.

**ARTICLE III
BOARD OF TRUSTEES**

3.1 Number, Tenure, Qualifications, and Election.

- (a) Number of Members. The Board of Trustees shall be composed of at least three (3) but not more than seven (7) persons meeting the qualifications stated in the Declaration.
- (b) Member Requirements. At all times, at least two (2) of the Board Members must have as their primary residence a Unit in the Project. All candidates for the Board shall indicate either in a written statement provided prior to the meeting or verbally at the meeting whether his or her Unit is that person's primary residence. Any candidate whose election or appointment would contravene this requirement shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one (1) can serve and maintain the requirements of this provision, the candidate with the highest number of votes shall prevail. If both candidates have equal votes, then the issue shall be resolved by a coin toss.
- (c) Term. The term of each Board Member shall be two (2) years. The terms of the Board Members shall overlap so that at least one (1) Board Member shall be elected each year.
- (d) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Committee. If the Association gives advance notice of any persons seeking election to the Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board Members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (e) Disqualification. If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section or until the Board Member is disqualified if no such notice is provided.

- (f) **Removal for Failure to Participate.** If any Board Member shall fail to appear at fifty percent (50%) or more of the regular meetings within any calendar year, after having received proper notice of the meetings and after the Board has attempted in good faith to schedule meetings consistent with all of the Board Members' schedules, the other Board Members may, by unanimous vote, remove that Member and appoint a new Member.

3.2 Meetings.

- (a) **Regular Meetings.** The Board shall hold regular meetings at least quarterly, and more often at the discretion of the Board.
- (b) **Who Is Entitled to Attend.** Board Members may attend all meetings. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session. Owners will comply with all reasonable rules established by the presiding officer for their attendance, including a requirement that they remain silent except when comments are solicited by the Board.
- (c) **Notice to Owners.** The Association is required to provide notice of Board meetings only to those Owners who request notice of a Board meeting from either a Board Member or the Manager and provide a valid email address at which the Owner will receive such notice. Any Owner who has requested notice of Board meetings will be given notice along with the Board Members.
- (d) **Owner Comments at Board Meetings.** At each meeting of the Board, the Board will provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Board may select a specific time period during the meeting and limit Owner comments to such a time period. The Board may set a reasonable length of time that each Owner may speak.
- (e) **Attendance by Telephone or other Electronic Means.** The Board may allow attendance and participation at any meeting of the Board by telephone or any other electronic means that allows for the Board Members to communicate orally in real time including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Board meets by electronic communication, the Board must provide information necessary to allow any Owner who has requested notice of Board meetings the ability to participate by the available means of electronic communication. A person participating by these means is considered to be present in person at the meeting.
- (f) **Special Meetings.** Special meetings of the Board may be called by or at the request of any two (2) Board Members or the President of the Association. Notice of any special meeting shall be given at least forty-eight (48) hours prior thereto to each Board Member. No notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (g) **Quorum and Manner of Acting.** Two (2) Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The Board has the authority to approve minutes of an annual meeting. The act of a majority of the

Board Members present at any meeting at which a quorum is present, and for which proper notice was provided to the Board Members, shall be the act of the Board. The Board Members shall act only as a committee, and individual Board Members shall have no powers as such.

- (h) **Place and Notice of Meetings.** The Board may designate any place in Utah County as the place of meeting for any regular meeting called by the Board but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Board Members shall be given at least ten (10) days' notice of Board meetings unless the meeting is at a regularly scheduled time and date of which each Board Member has received notice. Owners requesting notice of a meeting by email shall be provided such notice at least forty-eight (48) hours before the meeting. No notice is required to Owners of a Board meeting if: (a) the meeting is to address an emergency; and (b) each Board Member receives notice of the meeting less than forty-eight (48) hours before the meeting.
- (i) **Executive Session.**
 - (1) The Board or any other Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
 - (2) The minutes of the meeting at which an executive session is held shall include
 - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "to discuss the pending litigation with XYZ" or "to discuss a complaint of a Rule violation."
 - (ii) Decisions made during executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as "Decision made regarding attorney-client privileged issue that is recorded in separate attorney-client privileged minutes of the Executive Session" and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-Board Members only as required by law for the disclosure of attorney-client privileged information.
 - (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but

they are not confidential merely as a result of having been discussed or presented in executive session.

- (4) Executive sessions may be held to:
 - (i) consult with an attorney for the purpose of obtaining legal advice;
 - (ii) discuss and make decisions with respect to ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
 - (iii) discuss a matter relating to contract negotiations and purchases related to the Association, including review of a bid or proposal;
 - (iv) discuss an Association employee or personnel matter, including reviews, discipline issues, termination issues, salary issues, and the terms of employment;
 - (v) discuss a delinquent assessment or fine; or
 - (vi) to discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy.
- (5) The Board or a Sub-Committee holding the executive session shall determine who outside of that Sub-Committee shall be allowed to be present in executive session, and no one else is entitled to be present. All Board Members shall be entitled to be present at executive Sub-Committee meetings of the Board. All members of a Sub-Committee shall be entitled to be present in executive sessions of a Sub-Committee.

3.3 Informal Action and Action by Board Members without a Meeting.

- (a) Any action that is required or permitted by law or the Governing Documents to be taken at a meeting of the Board may be taken without a meeting if:
 - (1) all Board Members consent to the action by signing a writing (i.e. via letter or Electronic Transmission) describing the action taken, unless, before that time, any director revokes his or her consent by a writing signed by the director and received by the secretary; or
 - (2) the affirmative votes in writing for the action received by the Association and not revoked equal or exceed the minimum number of votes that would be required to take the action at a meeting at which all Board Members then in office were present and voted; provided, however, that after notice is transmitted in writing to each Board Member, each Board Member by the time stated in the notice:
 - (i) signs a writing for such action, signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
 - (ii) fails to demand in writing that action not be taken without a meeting; or
 - (3) votes against or abstains from voting, and waives in writing the right to demand that action not be taken without a meeting.

- (b) The notice under Section 3.3(a)(2) shall state, at a minimum:
 - (1) the action to be taken;
 - (2) the time by which the Board Member must respond to the notice; and
 - (3) that failure to respond by the time stated in the notice will have the same effect as:
 - (i) abstaining in writing by the time stated in the notice; and
 - (ii) failing to demand in writing by the time stated in the notice that the action not be taken without a meeting.
- (c) A Board Member who in writing has consented, voted, abstained, or demanded action not be taken without a meeting may revoke the consent, vote, abstention, or demand in a writing received by the Association by the time stated in the notice contemplated in Section 3.3(b).
- (d) The Board may utilize online, telephonic, electronic, email, remote, and any other means of Board Member voting to the extent not prohibited by the Act and the Utah Revised Nonprofit Corporation Act.
- (e) An action approved of pursuant to Section 3.3(a)(1) is effective at the time the last Board Member signs a writing describing the action taken, unless the Board establishes a different effective date. An action approved of pursuant to Section 3.3(a)(2) is effective at the end of the time stated in the notice transmitted, unless the notice states a different effective date.
- (f) Action taken pursuant to this Section has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board Members in any document.
- (g) For purposes of this section:
 - (1) “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
 - (2) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
 - (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
 - (4) Any response to any electronic communication shall be:
 - (i) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
 - (ii) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.

- (5) A communication shall satisfy the requirement to “describe the action taken” if:
 - (i) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
 - (ii) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
 - (iii) the writing from the Board Member sufficiently describes or restates the proposed action.

3.4 Compensation. No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a Board Member to the extent such expenses are unanimously approved by the Board.

3.5 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.

3.6 Vacancies. If vacancies shall occur in the Board by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

**ARTICLE IV
OFFICERS**

4.1 Officers. The officers of the Association shall be President, Vice President, Secretary, and Treasurer.

4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer’s death, resignation, disqualification, or removal, whichever first occurs. Any person may hold any two (2) or more offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act or execute any instrument in the capacity of more than one (1) office. All officers must be Members of the Board during the entire term of their respective offices.

- 4.3 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.
- 4.6 The President. The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (1) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (2) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in “Robert’s Rules of Order” or “The Modern Rules of Order”; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.7 The Vice President. The Vice President shall also act in the place and stead of the President in the event of the President’s absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Board.
- 4.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President’s absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board.
- 4.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have the authority and obligation to

generally implement the requirements of the Governing Documents as they relate to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.

- 4.10 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE V SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Board may from time to time by resolution designate such committees (each a "Sub-Committee"), such as an Architectural Control Committee, as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any Sub-Committee at any time.
- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board.
- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

**ARTICLE VI
INDEMNIFICATION**

- 6.1 Indemnification. No Board Member, officer, or member of a Sub-Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board Member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.
- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**ARTICLE VII
AMENDMENTS**

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Units holding at least sixty percent (60%) of the Allocated Interest in the Association at a meeting called for that purpose.

- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Utah County, Utah.

**ARTICLE VIII
WAIVER OF IRREGULARITIES**

- 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) If the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
 - (b) If the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held.
 - (c) If the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting.
 - (d) If the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
 - (e) For any action, vote, or decision that occurred without a meeting, they are waived if no objection to the particular procedural issue is made within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.
- 8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration; or
 - (b) Any failure to obtain the proper number of votes required to pass a particular measure.