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**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
THE Ruth**

**A Rowhome Planned Unit Development**

**Salt Lake City, Utah**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE Ruth ("Declaration") is effective when recorded with the Salt Lake County Recorder's Office by CW The Ruth, LLC, a Utah limited liability company. ("Declarant").

## RECITALS

- A. Capitalized terms in this Declaration are defined in Article I.
- B. The real property situated in Salt Lake City, Salt Lake County, Utah, described or shown in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a residential planned unit development consisting of Lots, residential Living Units, and related Common Areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as The Ruth ("Project").
- C. Declarant is the owner of the Parcel subject to this Declaration. By signing this Declaration, Declarant consents to subjecting the Project to the terms, covenants, conditions, and restrictions contained herein.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Property.
- E. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse Assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.
- F. The Association is not a cooperative.
- G. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Property, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.
- H. Declarant explicitly reserves for itself the option in the future to expand the Project.
- I. The Project is to be known as The Ruth.

## DECLARATION

**NOW, THEREFORE,** Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

### ARTICLE I. DEFINITIONS

1.1. **Act** shall mean and refer to the Utah Community Association Act, codified beginning at §57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Additional Land** shall mean and refer to any additional land which may be added to the Project in accordance with the provisions outlined in this Declaration.

1.3. **Architectural Review Committee** or **ARC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.4. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.

1.5. **Assessments** shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, late fees, interest, and fines, all as provided in this Declaration.

1.6. **Association** shall mean and refer to The Ruth Owners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.7. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.

1.8. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.9. **Common Areas** shall mean any improvement installed and maintained for the benefit of the Owners collectively, including utility lines servicing more than a single Living Unit; fences on the north, south, and west boundaries of the Property; landscaping sprinkler system; and other improvements deemed common by the Board. Common Areas may also include fire pits and dog runs and other items installed for the use and benefit of all Owners. There is no Common Area land owned by the Association, as the Common Areas will be located under or upon the Shared Access Area.

1.10. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Shared Access Area and Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses

declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act or the Governing Documents.

1.11. **Declarant** shall mean and refer to CW The Ruth, LLC, a Utah limited liability company, and any successor in interest.

1.12. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The Ruth, and any amendments or supplements thereto.

1.13. **Director** shall mean and refer to an individual member of the Board of Directors.

1.14. **Governing Documents** shall mean and refer collectively to the Plat, Declaration, Articles of Incorporation, Bylaws, and any Rules adopted by the Board.

1.15. **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. The Living Unit shall include, without limitation, the garage for the Living Unit, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, foundations, patios, and porches. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Living Unit. All pipes, wires, conduits, fire sprinkler lines and systems, or other utility lines or installations constituting a part of the Living Unit or serving only the Living Unit regardless of location, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be a part of the Living Unit.

1.16. **Lot** shall mean and refer to each of the individual lots within the Project, as shown on the Plat.

1.17. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.18. **Member** shall mean and refer to a Lot Owner.

1.19. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.20. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.21. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit.

1.22. **Owner or Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.23. **Parcel** as hereinbefore defined shall mean and refer to the real property legally described or illustrated in Exhibit A and any Additional Land annexed into the Project.

1.24. **Party Wall** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a shaft liner between two or more Living Units.

1.25. **Period of Declarant Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (1) the date on which all of the Living Units have been conveyed to purchasers, including Living Units that may be included within the Additional Land, regardless of whether such Additional Land has been added hereto; or (2) the Declarant executes and records a written waiver of its right to control.

1.26. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.27. **Plat** shall mean and refer to the final plat for The Ruth filed and recorded in the official records of Salt Lake County.

1.28. **Proceeding** shall mean a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.29. **Project** as hereinbefore defined shall at any point in time mean, refer to The Ruth.

1.30. **Property** as hereinbefore defined shall include the Parcel, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.31. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.32. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board on behalf of the Association.

1.33. **Shared Access Area** shall mean and refer to the land surrounding the footprint of the Living Units as shown on the Plat. The Shared Access Area is located upon and through each Lot, but shall be maintained by the Association. This includes the maintenance of the landscaping on and snow removal from the Shared Access Area, and the maintenance repair and replacement of the shared driveway running through the Shared Access Area.

1.34. **Supplemental Declaration** shall mean and refer to a written instrument recorded in the records of the Salt Lake County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

## ARTICLE II. PROPERTY DESCRIPTION

2.1 **Submission.** The Declarant hereby confirms that the Parcel described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Property and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2 **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as The Ruth.

2.3 **Description of Improvements.** The improvements contained in the Project will be located upon the Parcel. The major improvements contained in the Project are four (6) buildings built upon 18 Lots, each Lot containing a Living Unit or Commercial Pad. Each Living Unit shall have an enclosed garage. The buildings have concrete foundations and are wood framed with brick, stucco and/or metal siding exterior walls and a membrane roof. There are also other improvements detailed on the Plat, including the Shared Access Area and Common Areas. All improvements shall be constructed in a style and of materials architecturally compatible with the other improvements on the Project, as determined by the Declarant during the Period of Declarant Control, and afterwards, by the ARC. The Lots, their locations, and dimensions are indicated on the Plat. Other Lots and Living Units may be added to the Project on the Additional Land as reserved by the Declarant.

2.4 **Expansion of Project.** The Project may be expanded by the Declarant in accordance with the provisions of Article XII.

### **ARTICLE III. MEMBERSHIP AND VOTING RIGHTS**

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot and Living Unit in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot and Living Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot and Living Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot and Living Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned. Voting is limited to one (1) vote per Lot.

3.3. **Multiple Ownership Interests.** In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

3.4. **Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of a contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such

Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" as further discussed in Article V.

3.5. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser of his Lot to vote on all matters coming before the Association for vote provided the same is in writing and is presented to those Association officers conducting such vote as may be further provided in the Bylaws.

3.6. **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

#### **ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS**

4.1. **Easement of Enjoyment.** Each Owner shall have a right and easement of use and enjoyment in and to their Lot and Living Unit. In addition, each Owner shall have a mutual and non-exclusive right and easement of enjoyment in, to, and over the Common Areas and Shared Access Area. Such rights and easements shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. The Association shall also have a right and easement of use and enjoyment of the Common Areas and Shared Access Area for the purpose of carrying out its duties and fulfilling its obligations under the Declaration, including, without limitation, landscaping maintenance, snow removal, and the maintenance, repair, and replacement of the shared driveways. Other easements may be provided on the Plat.

4.2. **Utility Easement.** There is hereby created an easement upon, across, over an under the Shared Access Area and other area as may be depicted on the Plat for reasonable ingress, egress, installation, replacement, repair, or maintenance of all utilities, including, without limitation, gas, water, sewer, telephone, cable, telecommunications, and electricity. If any utility company or municipal authority requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Common Areas and Shared Access Area, the Board shall have the power and authority, without the need for any consent by the Owners to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3. **Easements for Ingress and Egress; Easements for Emergency Vehicle Access.** It is intended that the shared driveway located on the Shared Access Area is not intended to be a public access, route, thoroughfare, or street. There is hereby created an exclusive easement for ingress and egress for Owners, through and across, the Shared Access Area. There is also hereby created a perpetual nonexclusive emergency access easement upon, across and over the Shared Access Area for police, fire, medical, and other emergency vehicles and personnel for the purposes of providing police and fire protection and providing any other governmental or municipal service.



4.4. **Limitation on Easement.** An Owner's right and easement for the use and enjoyment of the Common Areas and Shared Access Area shall be subject to the following:

1) The right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Shared Access Area or Common Areas;

2) The right of the Association to suspend voting rights for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

3) The right of the Association to dedicate or transfer all or any part of any sewer, water and storm drain lines within the Shared Access Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Following the Period of Declarant Control, any such dedication or transfer must be assented to by two-thirds (2/3) of the Lot Owners. Any such dedication or transfer during the Period of Declarant Control may be done by Declarant, subject to any required municipal approval.

4.5. **Delegation of Use.** Any Owner may delegate his rights and easements of use and enjoyment to the Shared Access Area and Common Areas to Occupants or contract purchasers who reside on the Property. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.6. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner and Occupant shall fully and faithfully comply with the Rules.

## ARTICLE V. ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance, repair, and replacement of the Shared Access Area and Common Areas and for the administration, management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted.

5.2 **Covenant to Pay Assessments.** Each Owner of any Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including by illustration but not limitation all Annual, Special, or Individual Assessments described below, and other fees, charges, levies, and fines as provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to, payment of the cost of taxes (if any) and insurance; maintenance, repair and replacement of the Shared Access Area and Common Areas; payment of the costs of any

Common Expenses; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Governing Documents.

5.4. **Declarant's Assessment Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Lot or Living Unit owned by it until such time as the earlier of the following two events occurs: (1) certificates of permanent occupancy are issued and the Lots and Living Units are sold or rented; or (2) Declarant elects in writing to pay the Assessments, whichever first occurs.

5.5. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments (or quarterly if so determined by the Board) on the first day of each and every month (or quarter, if applicable) and no separate notices of such monthly (or quarterly, if applicable) installment shall be required. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.6. **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year Special Assessments, payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Shared Access Area or Common Areas; or for any other Association expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.7. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Shared Access Area or Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Living Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Shared Access Area made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the

Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.8. **Allocation of Assessments.** Annual and Special Assessments shall be fixed at a uniform rate for all Lots, except as may otherwise be provided.

5.9. **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 pay the excess to the Owners, 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.

5.10. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.11. **Certificate Regarding Payment.** Upon the request of any Owner, Mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, Mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.12. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Shared Access Area or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any

time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15. **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: Delinquent accounts shall be charged a late fee in the amount of 15% of the Assessment. The late fee shall accrue each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest shall also be added to all unpaid Assessment balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, attorney fees, and/or late fees shall constitute part of the Assessment lien provided above until paid. The Association may by Rule change the amount of the late fee described above.

5.16. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- 1) The Association may suspend such Owner's voting rights.
- 2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Salt Lake County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- 4) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive

from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Shared Access Area and Common Areas, except ingress and egress to an Owner's Living Unit may not be restricted.

6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

5.17 **Power of Sale.** The Owners hereby convey and warrant pursuant to Utah Code Ann. §57-1-20 and §57-8a-302 to the Association's attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration.

5.18. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of the Shared Access Area and Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19. **Reinvestment Fee.** Subject to the terms and conditions of this Section, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

1) Upon the occurrence of any sale, transfer, or conveyance of any Living Unit (as applicable, a "Transfer"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Living Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Living Unit, or (ii) the maximum rate permitted by applicable law.

2) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

a) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

b) Any Transfer to the Association or its successors.

c) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Living Unit transferred.

d) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Living Unit by the estate of an Owner.

e) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded, removing clouds on titles.

f) Any lease of any Living Unit or portion thereof for a period of less than thirty (30) years.

g) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

h) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

3) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

5.20. **Association Responsibility After Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay Assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.21. **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

## **ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION**

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Shared Access Area, Common Areas, and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and the Governing Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied

by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2. **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowner's association pursuant to the Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to the Lot Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles or Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- 1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- 2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws.
- 3) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents.

6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by the Declarant, if any.

7) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any Person as a Manager; hire employees to manage, conduct, and perform the business, obligations, and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Property.

8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted unless otherwise provided herein.

6.5. **Liability.** Any Director or officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Director or any officer of the Association is made a party to any proceeding because the individual is or was a Director or officer of the Association, the Association shall indemnify such individual against liability and all expenses incurred to the maximum extent permitted by law, unless the Director or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. During the Period of Declarant Control, the Declarant shall have the sole authority to appoint Directors.

6.7. **Qualification of Directors.** Except for Directors appointed by the Declarant, all Directors shall be an Owner or the spouse of an Owner. If an Owner is a trust or business entity, such trust or entity may designate a representative to serve on the Board who shall be an officer, partner, member, manager, trustee, or beneficiary of such Owner. Except for Directors appointed by the Declarant, no two (2) Directors may reside in the same Living Unit or be business partners if the business is related to their ownership of a Living Unit. If a Director ceases to meet any required qualifications during the Director's term, such person's membership on the Board shall automatically terminate.

6.8. **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the



amicable resolution of any disputes, grievances, and claims regarding the initial management of the Association or the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, in addition to any requirements set forth in the Act, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

1) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- a). The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- b). The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- c). The proposed remedy; and
- d). The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
- e). That the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the claim.

2) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

3) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice.

4) Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:

- a). Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
- b). Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;

c). Receive approval from two-thirds (2/3) vote of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and

d). Allow the one hundred and eighty (180) day right to cure period to expire.

5) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys' fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys' fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

6) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than a majority of the total voting power of the Association, and (b) not less than sixty-seven percent (67%) of the total voting power of the Board; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.

7) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

## **ARTICLE VII. MAINTENANCE**

7.1. **Shared Access Area and Common Area Maintenance.** The Association shall maintain, repair, and replace all Common Areas and Shared Access Area improvements including landscaping and snow removal in the Shared Access Area and the

repair and replacement of the shared driveway within the Shared Access Area. In addition, the Association shall maintain the private utility lines serving more than one Living Unit from the connection to the main utility line or the connection from the meter of the third-party provider to the connection to the individual utility line. The improvements required to be maintained by the Association shall be done in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such improvements are intended. Certain utilities may be dedicated to a local municipality, at which point the Association shall no longer have the maintenance, repair, and replacement responsibilities described above. The Association shall have no obligation to perform any exterior maintenance, repair, and replacement of any part of a Living Unit.

72. **Services.** In the discretion of the Board, the Association may provide or contract for services deemed by the Board to be of benefit to the Project.

73. **Lot and Living Unit Maintenance.** Subject to the architectural controls provided in Article X, each Owner shall have the obligation to provide exterior and interior maintenance of the Lot and Living Unit including but not limited to painting, maintenance, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, driveways, structural elements of the Lot and Living Unit, foundations, windows, doors, garage, patios, porches, steps, utility lines that solely service the Lot or Living Unit. The responsibility and cost to maintain, repair, and replace, shared roofs shall be borne equally by the Lot Owners benefited thereby. As necessary or desirable, each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating, and air conditioning systems. The Owners shall own, maintain, repair, and replace all individual utility lines serving only their Living Unit regardless of location.

74. **Party Wall Maintenance.** By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall (as defined above) be maintained in good condition and repair to preserve the integrity of the Living Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Living Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacement as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefited by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

75. **Owner Maintenance Neglect.** The Association shall have the power and authority without obligation and liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including the Living Unit); but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered, or maintained upon such Lot in violation of this Declaration or any Rules of the Association. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein.

76. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas and Shared Access Area as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

## ARTICLE VIII. INSURANCE

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

### 82 **Property Insurance.**

1) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Areas, Shared Access Area, and all buildings including all Living Units, as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

a) 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 permanent fixture, improvement, or betterment installed in or to the Living Unit or otherwise permanently part of or affixed to Common Areas, Shared Access Area, and Living Units, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living 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.

d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the Property has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

2) **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:

a) The Association's policy provides primary insurance coverage, and;

b) Notwithstanding Subsection (a) above, and subject to Subsection (c) below:

i) the Owner is responsible for the Association's policy deductible; and

ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

c) An Owner that has suffered damage to any combination of a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

d) If an Owner does not pay the amount required under Subsection c) above within thirty (30) days after substantial completion of the repairs to, as applicable, the Living Unit the Association may levy an individual Assessment against the Owner for that amount.

3) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

4) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

5) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection 2(b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

83. **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, ownership or maintenance of the Common Area and Shared Access Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying a claim because of the negligent acts of the Association or another Owner.

84. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall to the extent possible: (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 of Directors, 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.

85. **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association may obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular

Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) officers and Directors 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.

86. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association, if any, to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

87. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

88. **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.

89. **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

810. **Insurance Trustee.** In the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of Association's voting interests, the Board of Directors 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 of Directors (as the case may be) shall require.

811. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct

authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

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

813 **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, Board of Directors may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Mortgagees in light of the insurance then available and the prevailing practice with respect to other similar projects. The Board of Directors shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Mortgagees and Owners upon request.

## **ARTICLE IX. USE RESTRICTIONS**

9.1. **Use of Common Areas.** The Shared Access Area and Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with a single-family Living Unit and are restricted to such use except as otherwise provided herein. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Living Unit, that the activities would not be in violation of applicable local ordinances, that the business activity does not involve the solicitation of Occupants or Owners, that the business activity does not involve the parking of vehicles on the Shared Access Area, and the business will not result in an increase to the Association's insurance premiums. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, Common Areas, or Shared Access Area, nor shall anything be done or placed on any Lot, Common Areas, or Shared Access Area which interferes with or jeopardizes the quiet enjoyment of others, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Living Unit which shall cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils



included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Motor Vehicles**. No inoperable, unlicensed, or unregistered vehicle shall be parked at the Project except inside a closed garage and then only for a temporary time to allow the vehicle to be repaired. However, no motor vehicle of any kind shall be repaired, constructed, or reconstructed within the Project, including upon any Lot or Shared Access Area, except for emergency repairs to vehicles.

9.5. **Parking**. Parking within the Project is only allowed in the Living Unit's garage. Parking elsewhere, including, without limitation, on the Shared Access Area, is prohibited. Additional parking and visitor parking must be done on the nearby public streets. The Board of Directors is authorized to adopt and implement reasonable Rules pertaining to parking within the Project. The Board of Directors may hire at their discretion a third-party parking enforcement company to enforce any Rules, including the towing of any vehicles in violation of this Section or other parking Rules.

9.6. **Pets**. Up to two (2) domestic pets per Living Unit are allowed. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive. Savage or dangerous animals are prohibited, as determined by the Board. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including, but not limited to, requirements for registration, the use of leashed and noise barking limitations, and the types of pets that will be allowed at the Project. All pets must be registered with the Association within ten (10) days of occupancy of a Living Unit. All pets must be properly licensed and registered with the appropriate governmental agency and be in compliance with all applicable municipal ordinances and regulations. Pets shall abide by all pet Rules adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Shared Access Area, Common Area, or the Lot of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Shared Access Area and shall be leashed or under the immediate control of its owner whenever outside the Living Unit. Pets that routinely violate Rules and/or create a nuisance, as determined in the discretion of the Board, are subject to removal upon request of the Board.

9.7. **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.

9.8. **Nuisances**. No resident shall create, maintain or permit a nuisance in, on, or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Living Unit, Lot, Shared Access Area, or Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot, Shared Access Area, or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing, or material upon any Lot or in the Common Areas or Shared Access Area that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas or Shared Access Area;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invites;
- 8) Too much noise in, on or about any Lot, Shared Access Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers; and
- 9) Too much traffic in, on or about any Lot, Shared Access Area, or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.

9.9. **Signs.** No signs whatsoever (including, without limitation, commercial and political signs) shall be erected or maintained on any Lot, except:

- 1) Signs required by legal proceedings;
- 2) One (1) standard "for sale" or "for lease" sign that may be displayed in the window of a Living Unit; and
- 3) Other signs approved by the Board.

9.10. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection as set forth by the Board. The Association may provide garbage cans and waste removal services as determined by the Board.

9.11. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is not required to, enter a Living Unit to ensure that it is in compliance with this and the following Section.

9.12. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for items approved by the Board like patio furniture, and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the Architectural Review Committee.

9.13. **Window Coverings.** Every Owner of a Living Unit shall be obligated to ensure that window coverings are installed within the Living Unit within one (1) month of purchasing or taking possession of the Living Unit. Furthermore, the Board of Directors is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.

9.14. **Leases.** The leasing, renting, or granting of occupancy (hereinafter in this Section referred to as a "lease") of a Living Unit is permitted. **Each Owner by acceptance of a deed or other document of conveyance acknowledges and agrees that the Living Units may be leased on a nightly, weekly, monthly, or other periodic basis, and that vacation and other short term leases are expressly permitted.** All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Owners whose tenants frequently violate the Governing Documents, as determined by the Board, may have his/her short-term leasing rights (less than 30 days) revoked for a period of time determined in the sole discretion of the Board, not to exceed six (6) months. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner or Occupant fails to act accordingly, the Board may initiate eviction Proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. Copies of all lease agreements shall be provided to the Board upon request. Owners who lease their Living Unit for a term greater than one (1) month shall, within seven (7) days of tenant occupancy, provide the Board with the names, phone numbers, and email addresses of all adult tenants, as well as the tenants' vehicle description(s) and any additional information requested by the Board.

9.15. **Energy Conservation Equipment.** Solar energy collector panels and attendant hardware or other energy conservation equipment shall be prohibited from being constructed or installed on any Lot or Living Unit in the Project. Notwithstanding the forgoing, if the Board elects to allow energy conservation equipment in the Project, then it may adopt Rules for the installation of solar panels or other energy conservation equipment. Any such Rules must require that the installation be an integral and harmonious part of the architectural design of the Lot or Living Unit. The ARC shall have the sole discretion to determine compliance with the Rules.

9.16. **No Subdivision.** No Lot shall be further subdivided by any Owner into smaller Lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred, or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from re-platting the Project or re-subdividing any Lot.

9.17. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the restriction would create an unreasonable hardship or burden

on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction 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 Association, other 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 member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

## **ARTICLE X. ARCHITECTURAL CONTROLS**

10.1. **Architectural Review Committee.** The Board may appoint a three (3) member Architectural Review Committee, the function of which shall be to ensure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The ARC need not be composed of Owners. If the ARC is not appointed, the Board shall perform the duties required of the ARC.

10.2 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ARC. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, fencing, repairs, excavation, patio covers, screens, windows, doors, fences, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Property. If the Board approves the changes, it may designate the design, color, style, model, and manufacturer of any such change. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ARC. Any structural change may be denied by the Board, and the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the physical integrity of the building or other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

10.3. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Units, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project.

10.4. **Liability for Damages.** The ARC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article X.

## **ARTICLE XI. ENFORCEMENT**

The Association or any Owner shall have the right to enforce, by Proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such,

and the right to recover damages and other sums for such violation(s). The Association or any Owner shall also have the right to enforce by Proceedings at law or in equity the provisions of the other Governing Documents, including, without limitation, the Bylaws and the Rules, and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees.

## ARTICLE XII. SPECIAL DECLARANT RIGHTS

12.1. **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any improvements shown on the Plat;
- 2) Any Lots and corresponding Living Units upon all or any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Project; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2. **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Living Units to be constructed thereon, all in accordance with the provision of this Section.

- 1) The Project may be expanded by the addition of all or a portion of other real property not yet so identified, such real property or portions thereof where applicable being referred to as "Additional Land".
- 2) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.
- 3) Declarant's right to expand the Project as provided in this Section shall not expire until the Declarant elects in writing to not add the Additional Land to the Project.
- 4) The Additional Land may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.
- 5) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein.
- 6) All improvements erected upon any Additional Land added to the Project will be compatible with the Living Units and improvements then upon or to be constructed upon the Property.
- 7) The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the Salt Lake County records, a supplemental Plat pertaining to such Additional Land to be added showing the location and dimensions

of each Lot and Living Unit created from and located upon such Additional Land, and the Living Unit designation of each Living Unit so created.

8) Simultaneously with the recording of said supplemental Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the following: (i) if not shown on the supplemental Plat, a legal description of the Additional Land added to the Project; (ii) the designation of each Lot and Living Unit created from and included within the Additional Land.

12.3. **Other Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

- 1) the right to maintain sales offices and model Living Units at any location within the Project;
- 2) the right to use easements through the Common Areas, Shared Access Area, and Lots as set forth in this Declaration;
- 3) the exclusive right to appoint or remove members of the Board during the Period of Declarant Control;
- 4) the right to freely market the Project as determined exclusively by Declarant, including, without limitation, the right to place signs and other advertising materials at any location within the Project or upon any Living Unit, Lot, Common Area, Shared Access Area, and so forth;
- 5) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- 6) the right to make and adopt Association Rules without being subject to the requirements of §57-8a-217 of the Act; and
- 7) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

12.4. **Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will excise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

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

12.6. **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas or Shared Access Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas and Shared Access Area as originally constructed or created by Declarant.

12.7. **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights, in whole or in part, created or reserved under this Declaration to any Person.

12.8. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Living Unit prior to the contracting for the conveyance of the Living Unit to a purchaser.

12.9. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over or upon those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement", Shared Access Area, or otherwise designated as an easement area over any Common Areas on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

3) Easement granting the privilege of entering upon the Shared Access Area and Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Shared Access Area and Common Areas for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities

5) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or

occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

### **ARTICLE XIII. RIGHTS OF FIRST MORTGAGEE**

Notwithstanding anything to the contrary contained herein, the following provisions apply:

13.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

13.2. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3. **Abandonment, Termination, Etc.** Unless all of the holders of first Mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission, or otherwise to abandon or terminate the Project.

13.4. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

### **ARTICLE XIV. RIGHT OF ENTRY**

The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.



## ARTICLE XV. AMENDMENTS

### General Amendment Requirements.

1) **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended unilaterally by the Declarant without any additional approval requirement. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent.

2) **Amendments by Association.** After termination of the Period of Declarant Control, amendments to this Declaration shall be proposed by either a majority of the Board or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature shall be required.

## ARTICLE XV. MISCELLANEOUS

15.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes.

15.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association and as further allowed by applicable laws, including the Act and the Utah Revised Nonprofit Corporation Act.

15.3. **Dissolution.** Subject to the requirements set forth in Article XIII of this Declaration pertaining to Mortgagee protection, the Association may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make Assessment payments for the maintenance and upkeep of the Common

Areas, Shared Access Area, , curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V of this Declaration.

15.4. **Interpretation and Severability**. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.5. **Covenants to Run with Land**. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.6. **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 disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, Common Area, or deviations from provisions of the Governing Documents. Any modification or accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

15.7. **No Waiver**. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.8. **Security**. The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Areas in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. **EACH OWNER AND OCCUPANT UNDERSTANDS AND**



**EXHIBIT A**  
**PARCEL DESCRIPTION**

**(See Next Page)**



## **EXHIBIT B**

### **BYLAWS OF THE Ruth OWNERS ASSOCIATION, INC.**

**SALT LAKE CITY, SALT LAKE COUNTY, UTAH**

THESE BYLAWS OF THE Ruth OWNERS ASSOCIATION, INC. are effective upon recording in the Salt Lake County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

#### **RECITALS**

1. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
2. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as THE Ruth, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

#### **ARTICLE I DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration.

#### **ARTICLE II APPLICATION**

All present and future Owners, Mortgagees, Occupants, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units, or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

**ARTICLE III  
OWNERS MEETING**

3.1 **Annual Meetings.** The annual meeting of the Owners shall be held each year on a day and at a time established by the Board of Directors. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board of Directors shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board of Directors may from time to time by resolution change the month, date, and time for the annual meeting of the Owners. During the Period of Declarant Control, annual meetings of the Owners are not required and will only be held in the discretion of the Declarant.

3.2 **Special Meetings.** Special meetings of the Owners may be called by a majority of the Board of Directors, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within 45 days of receipt of the request. During the Period of Declarant Control, special meetings may only be called by the Declarant.

3.3 **Place of Meetings.** The Board of Directors may designate any place in Salt Lake County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.4 **Notice of Meetings.** The Board of Directors shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Owners. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than fifteen (15) days prior to the meeting. Such notice may be emailed, hand-delivered, mailed, texted, or posted upon the Association's official website, if any. If emailed, such notice shall be deemed delivered when sent to the Owner's email address registered with the Association. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Owner at the Owner's address registered with the Association, with first-class postage thereon prepaid. Each Owner shall register with the Association such Owner's current email address and mailing address for purposes of notice hereunder. Such registered email and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting.

3.6 **Record Date for Notice Purposes.** The Board of Directors may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Living Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 **Quorum.** At any meeting of the Owners, the presence of any Owner or a holder of a proxy entitled to vote shall constitute a quorum for the transaction of business.

3.8 **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 Living Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Living Unit or the Owners' attorneys when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. 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. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.9 **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 Living Unit of such Owner, as shown 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 Owner, unless a greater proportion is required by the Articles, these Bylaws, or the Declaration. When a Living Unit is jointly owned, any Owner may exercise the vote for such Living Unit on behalf of all Co- Owners of the Living Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Living Unit, no vote shall be counted for that Living Unit. In no event shall fractional or cumulative votes be exercised with respect to any Living Unit.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board of Directors or of the Owners



shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Directors. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver on any notice requirements.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of U.C.A. §16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

#### **ARTICLE IV BOARD OF DIRECTORS**

4.1 **General Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of three (3) persons who meet the qualifications provided in the Declaration.

4.3 **Election to the Board of Directors.** During the Period of Declarant Control, the Board of Directors shall be appointed by Declarant. Following the Period of Declarant Control, the election to the Board of Directors shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of Declarant Control, Director terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect two (2) Directors for two (2) year terms and one (1) Director for one (1) year terms, and at each annual meeting thereafter, the Owners shall elect the number of Directors whose terms are to expire for a term of two (2) years each.

4.5 **Regular Meetings.** The Board of Directors shall hold meetings at least quarterly at the discretion of the Board of Directors.

4.6 **Special Meetings.** Special meetings of the Board of Directors may be called by the President or a majority of the Directors on at least two (2) business days' prior notice to each Director. The person or persons authorized to call special meetings of the Board shall provide a conference call-in number for Directors not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message. By unanimous consent of the Board of Directors, special meetings may be held without call or notice to the Directors.

4.7 **Quorum and Manner of Action.** A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Directors present at any meeting at which a quorum is present and for which proper notice was provided to the Directors shall be the act of the Board of Directors. The Directors shall act only as the Board of Directors, and individual Directors shall have no powers assuch.

4.8 **Board Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- a. Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- b. Discuss an existing or potential Proceeding;
- c. Discuss a labor or personnel matter;
- d. Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- e. Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- f. Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.9 **Board Action.** Notwithstanding noncompliance with Section 4.8, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with Section 4.8 may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute or approved the minutes recording the Board action, whichever comes first.

4.10 **Compensation.** No Director shall receive compensation for any services that such member may render to the Association as a Director; provided, however, that a Director may be reimbursed for expenses incurred in performance of such duties as a Director to the extent such expenses are approved by a majority of the other Directors. Nothing herein contained shall be construed to preclude any Director from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Directors.

4.11 **Resignation and Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Director it appoints at any time. A Director elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a special meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association.

4.12 **Vacancies and Newly Created Board Memberships.** If vacancies shall occur in the Board of Directors for any reason during the Period of Declarant Control, the Declarant shall elect the Director to fill the vacancy. Following the Period of Declarant Control, if vacancies shall occur in the Board of Directors for any reason (including death, resignation, or disqualification) except removal by the Owners, the Directors then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Directors then in office, though less than a quorum. Any vacancy in the Board of Directors occurring by reason of removal of a Director by the Owners may be filled by election of the Owners at the meeting at which such Director is removed. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Directors shall continue to serve until their successors are elected.

4.13 **Action Taken Without a Meeting.** Directors have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of U.C.A. §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.14 **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Director or Owner at any meeting thereof shall be a waiver of notice by that Director or Owner of the time, place, and purpose thereof.

4.15 **Adjournment.** The Board of Directors may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.16 **Meeting.** For purposes of this Article IV, a Board meeting does not include a gathering of Directors at which the Board does not conduct and vote on Association business.

## **ARTICLE V OFFICERS**

5.1 **Officers.** The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Directors.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each annual meeting of the Owners. Each such officer shall hold such office until the next ensuing meeting of the Board of Directors following the annual Owners meeting and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board of Directors 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 of Directors may from time to time determine.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board of Directors or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board of Directors at any time, with or without cause.

5.5 **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 majority vote of the Board of Directors at any regular or special Board meeting.

5.6 **The President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) 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." 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.

5.7 **The Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board of Directors or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board of Directors may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **The Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board of Directors, 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 of Directors. The Treasurer shall perform such other duties as required by the Board of Directors.

5.10 **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 of Directors.

## **ARTICLE VI COMMITTEES**

6.1 **Designation of Committees.** The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A 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 committee at any time.

6.2 **Proceeding of Committees.** Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 **Quorum and Manner of Acting.** At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such 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 committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board.

6.4 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of such 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 committee designated by it thereunder.

6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board of Directors due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Directors, constitute the then total authorized membership of the 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 VII INDEMNIFICATION**

7.1 **Indemnification** In addition to the indemnification provisions and requirements set forth in the Declaration, no Director, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Director, officer, or 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 Director, officer, or committee member of the Association, 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 Director, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Director, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided 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 willful or 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. The Association, its Directors, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **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 entitled to under the Acts or under any agreement, vote of disinterested Directors or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Directors, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Director, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board of Directors, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, Manager, or employee of the Association or is or was serving at the

request of the Association as a Director, officer, committee member, Manager, or employee, against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VII.

7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board of Directors, in lieu of such indemnity, to settle any such claim 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 VIII RULES AND REGULATIONS**

The Board of Directors shall have the authority to adopt and establish by resolution such Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and Occupants. Owners are responsible to ensure that their Occupants and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines.

## **ARTICLE IX AMENDMENTS**

9.1 **Amendments by Declarant.** During the Period of Declarant Control, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws, without the approval of the Owners, for any reason. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Any amendment during the Period of Declarant Control shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the recorder of Salt Lake County, State of Utah.

9.2 **Amendments by Association.** After termination of the Period of Declarant Control, amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or included as part of the written ballot in lieu of such meeting. Except as otherwise provided herein, the Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than fifty percent (50%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the President shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Living Unit is

owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Living Unit under this Section. If a Living Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Living Unit under this paragraph. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any rights of Declarant without the express written consent of Declarant.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Declarant, on behalf of the Association, has executed this instrument the day and year set forth below.

**CW THE Ruth, LLC**

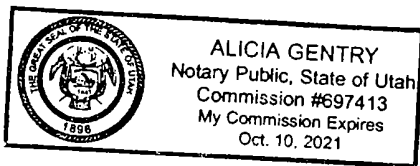
By: \_\_\_\_\_

Its: \_\_\_\_\_

*[Handwritten Signature]*  
President

State of Utah                     )  
  ):ss  
County of Davis                     )

The foregoing instrument was acknowledged before me this 22 day, June 2018 by Darlene Carter, Manager of CW THE Ruth, LLC, a limited liability company, and said person duly acknowledged to me that CW THE Ruth, LLC executed the same.



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC