

Ent 1209928 Wk 2051 Pg 1688  
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Cache County, UT  
Michael Gleed, Rec. - Filed By SA  
For NORTH HOA MANAGEMENT

**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
ELK MOUNTAIN**

a Planned Unit Development  
in  
Cache County

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ELK MOUNTAIN**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ELK MOUNTAIN ("Declaration") is adopted by Kartchner Land Management, Inc., a Utah corporation (the "Declarant"), and is effective as of the date it is recorded in the office of the Cache County Recorder.

**RECITALS**

- A. The *Declaration of Covenants, Conditions and Restrictions (With Bylaws) Elk Mountain Planned Unit Development* was recorded in the Cache County Recorder's Office on October 21, 2009 as Entry No. 1009225, in Book 1596, and beginning at Page 21 (the "Enabling Declaration").
- B. The *Bylaws of Elk Mountain Home Owners Association* were recorded as Articles 12, 13, and 14 of the Enabling Declaration.
- C. This *Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Elk Mountain* is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project, (2) conform to changes to the Utah Community Association Act and other Utah law, (3) provide for a general plan for managing the Project, and (4) in furtherance of the effort to protect and enhance the value of the Project.
- D. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration and all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
- E. This Declaration affects the real property situated in Cache County described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.
- F. Portions of the Project may be developed as attached townhomes, attached twin homes, or detached single-family homes. The Declarant, may form sub-associations or service areas with rules, and assessment structures to govern specific neighborhoods and product types. However, nothing in this Declaration shall require the creation of a community sub-association for each neighborhood or service area. If a sub-association is created within the Project, the powers, authority, and jurisdiction of any such sub-association shall be subordinate to that of the Association.
- G. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previous bylaws of the Association and any amendments thereto.

Ent 1209928 Bk 2051 Pg 1689

- H. Pursuant the amendment requirements contained in Article 15, Section 15.7(a) of the Enabling Declaration, the undersigned hereby certifies that this Declaration is approved and adopted pursuant to the Declarant's unilateral amendment authority.
- I. Declarant reserves the right to amend and supplement this Declaration from time to time, in the discretion of Declarant, to formally include additional real property within the Project and to cause such additional property to become subject to the terms and conditions of this Declaration, or to accomplish any other purpose desired by Declarant.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the covenants set forth below, Declarant hereby adopts this Declaration. This Declaration, together with the Plat, Bylaws, and Rules adopted by the Association, shall define and govern the rights of the Owners and the Association related to the Project.

#### **ARTICLE 1: DEFINITIONS**

The capitalized terms used in this Declaration shall have the meanings set forth in this Article 1. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1 **"Act"** shall mean the Community Association Act codified beginning at Utah Code § 57-8a-101 *et seq.*, in effect at the time this Declaration is recorded, and as such may be amended from time to time.

1.2 **"Additional Land"** shall mean without limitation, any parcel of land that is annexed into the Project by the Declarant.

1.3 **"Allocated Interest"** shall mean the interest of that Owner which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. Each Lot or Unit within the Project is assigned an equal Allocated Interest and one equal vote, subject to the limitations set forth in this Declaration.

1.4 **"Articles"** shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any shall be formed for the Association.

1.5 **"Assessment"** shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.

1.6 **"Association"** shall refer to the Elk Mountain Home Owners Association, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group

1.7 **"Board Member"** shall mean a duly-qualified and elected or appointed member of the Board of Directors.

1.8 **"Board of Directors"** or **"Board"** shall mean the governing board with primary authority to operate and manage the affairs of the Association.

Ent 1209928 Bk 2051 Pg 1690

1.9 **"Bylaws"** shall mean the bylaws of the Association attached as Exhibit B and all amendments thereto. No amendment to the Bylaws shall be effective until it is recorded.

1.10 **"Common Area"** shall, unless otherwise more specifically provided in this Declaration, mean the common area within the Project as reflected on the recorded Plats of the Association, and any improvements thereon, and specifically including, but not necessarily limited to: (a) open space lots not privately held; (b) trails, boundary fences, sidewalks, streetlights, parking areas, or other improvements located within the designated Common Areas on the Plats; (c) structures built within the Common Areas on the Plats including any clubhouse, pavilion, swimming pool, basketball court, or other common amenities or facilities; (d) all Limited Common Areas; and (e) all other parts of the Project outside of the Lots not dedicated to the public or which are necessary or convenient to the Project's existence, maintenance, safety, or normally in common use. In accordance with the Plat, the Common Areas and facilities are owned by the Association.

Common Area shall not include: (i) any roads and associated utilities dedicated to and accepted by the City; (ii) any roads, open space, parks, facilities, or other landscaped areas owned or controlled by a Neighborhood Association; or (iii) any open space and/or parks dedicated to and accepted by the City.

1.11 **"Common Expenses"** shall mean the actual and estimated costs incurred for the general benefit of all Owners including: (a) maintenance, management, operation, repair, and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Lots which are maintained by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) extermination, security, gardening, common utilities, and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.12 **"Control Period"** shall mean the period of time during which the Declarant may act as the Board of Directors or appoint Board Members. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots, and all of the Additional Land that may be annexed, have been conveyed to purchasers other than a Declarant or its successors, assigns, and affiliates; or (ii) the Declarant executes and records a written waiver of its right to control the Association. The Special Declarant Rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.13 **"Declarant"** shall mean Kartchner Land Management, Inc., a Utah corporation, or its successors or assigns. The Declarant may assign all or part of its rights hereunder.

1.14 **"Declaration"** shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Mountain, including all attached exhibits, which are incorporated by reference, and any and all amendments to this Declaration.

1.15 **“Design Guidelines”** shall mean those requirements governing the site location and architectural design of Dwellings, buildings, and other structures and improvements within the Project as adopted by the Board or DRC as provided herein.

1.16 **“Design Review Committee”** shall mean the Elk Mountain Home Owners Association Design Review Committee as set forth herein.

1.17 **“Development Agreement”** shall mean an agreement entered between the Declarant and the governmental entity with jurisdiction over the development of the Project which places restrictions, limitations, or guidance on the development of any portion of the Project

1.18 **“Dwelling”** shall mean any residential structure built or to be built on any Lot or Unit within the Project, including the attached garage.

1.19 **“Election District”** shall mean the geographical area which may constitute any portion or portions of the Project from which the Members located within that geographical area shall elect one or more Board Members.

1.20 **“Governing Documents”** shall mean and refer to the Declaration, the Plat, the Bylaws, the Rules, the Articles, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project.

1.21 **“Landscaping”** shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants and like improvements located within the Project, as well as the appurtenant sprinkling and irrigation systems.

1.22 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Lot.

3.1 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Lots to the exclusion of other Owners. Conveyance of a Lot includes the use of the Limited Common Area designated for the use of the Owner of the Lot. Whether or not indicated on the Plat, the Limited Common Areas shall include facilities appurtenant to the Lots including porches, balconies, driveways, and portions of the Common Areas bounded by approved fences on the Lots. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the provisions in this Declaration and the Design Guidelines. The Declarant and/or the Board shall have the power and discretion to determine Limited Common Area boundaries if the Governing Documents are found ambiguous.

1.23 **“Lot”** shall mean any numbered building Lot, Unit, or parcel shown on the Plats within the Project. The term Lot as used in this Declaration shall include all separately owned and identified parcels of real property including but not limited to Single-Family lots, Townhome Lots, and Twin Home Lots. The term Lot shall include any Dwelling, structure, or other improvement constructed thereon. The Declarant shall have the sole authority to determine if a particular Lot is categorized as a Single-Family Lot, a Townhome Lot, or a Twin Home Lot.

1.24 **“Manager”** shall mean any entity or Person engaged by the Board of Directors to manage the Project.

1.25 **“Member”** shall mean and refer to a Lot Owner as a Member of the Association.

1.26 **“Neighborhood Association”** shall mean an independent homeowners association comprised of Owners of Lots within the Project that is designated and created by the Declarant. There is no requirement that a Neighborhood Association be created for any plat or Project area. If designated and created, then Each Neighborhood Association shall be organized pursuant to Utah law and shall be subject to this Declaration. All Neighborhood Associations are subordinate to the Association.

1.1. **“Occupant”** shall mean any Person living, dwelling, visiting, using, entering into, or staying in a Dwelling in the Project, including, without limitation, family members, tenants, lessees, guests, representatives, and invitees of an Owner or an Occupant. Occupants shall be bound by the restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.27 **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the County Recorder of Cache County; however, Owner shall not include a trustee for a deed of trust. Each Owner shall automatically be a Member of the Association.

1.28 **“Party Wall”** shall mean a wall, including without limitation a foundation wall, that forms part of a Dwelling and is located on or adjacent to a boundary line between two or more adjoining Lots or Dwellings that are owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Dwellings as a structural partition wall. A Party Wall may be separated by a sound board between two or more Dwellings.

1.29 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.

1.30 **“Plat”** shall mean, and refer collectively to all record of survey maps of Elk Mountain subdivision, recorded in the records of the Cache County Recorder and all amendments and supplements thereto, along with any Additional Land annexed or to be annexed into the Project.

1.31 **“Project”** shall mean the property described in Exhibit A and all land, structures, and improvements thereon including the Lots, roads, open spaces, Common Areas, and Limited Common Areas. The Project shall also include any Additional Land annexed into the Association and made subject to this Declaration.

1.32 **“Rules”** shall mean and refer to the rules and regulations adopted by the Board for the Association.

1.33 **“Service Area”** shall mean a geographical area in the Project in which the Lots within that area receive special benefits or services from the Association that the Association does not provide to all Lots within the Project. The Declarant may designate Service Areas and assign Lots to a particular Service Area at any time prior to the expiration of the Control Period. Thereafter, the Board may designate Lots subject to Service Areas through a Board resolution, or similar Association document.

1.34 **“Single-Family Lot”** shall mean a Lot within the Project upon which an unattached Dwelling may be constructed. The Single Family Lots shall comprise a single Election District that has the right to elect two (2) Board Members.

1.35 **"Supplement"** or **"Supplemental Declaration"** shall mean a document recorded with the Cache County Recorder by the Declarant or Association to make additional real property subject to the terms of this Declaration, or which withdraws real property from the restrictions of this Declaration.

1.36 **"Townhome Lot"** shall mean a Lot within the Project upon which an attached townhome Dwelling may be constructed that is connected to a row of three or more townhome style Dwellings. The Townhome Lots shall comprise a single Election District that has the right to elect two (2) Board Members.

1.37 **"Twin Home Lot"** shall mean a Lot within the Project upon which an attached Dwelling may be constructed that shares a Party Wall with one other Dwelling. The Twin Home Lots shall comprise a single Election District that has the right to elect one (1) Board Member.

1.38 **"Terms and Conditions"** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

## **ARTICLE 2: THE PROJECT**

2.1 **Binding Effect of Governing Documents.** The real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is submitted to the Act. The Declarant confirms that that the Project and any Lot, or parcel of land within the Project shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Lot, Unit or parcel of property within the Project, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.

2.2 **Purpose.** Declarant intends that this Declaration establish a governance structure and a system of standards and procedures for the development, expansion, administration, maintenance, and preservation of Elk Mountain as a master planned community. The Association is intended to be an integral part of the Project as it will own, operate, and maintain various Common Areas and improvements and shall administer and enforce this Declaration and the other Governing Documents referenced in this Declaration for the common benefit of all owners of the Project.

2.3 **Nature of the Project.** The Project is a master planned residential community consisting of detached single-family homes, townhomes, and twin homes in Cache County. The densities for the Project will be set forth on the respective Plats and may be further defined or clarified in Development Agreements with governmental authorities. The Project is subject to refinement by Declarant, or as required by local governmental ordinances.

2.4 **Project Name.** The Project is named "Elk Mountain" and is located entirely in Cache County, Utah. The name for the Project may be different than the name identified in this Declaration and on the Development Agreement and Plats. The Association and the Project are not a cooperative.

2.5 **Supplement and Exclusions to Declaration.** At any time during the Control Period, Declarant or its assigns may add or remove any real property to or from the terms of



this Declaration by recording with the Cache County Recorder a Supplement or Exclusion to this Declaration which (i) describes such property, (ii) declares that such property is or is not subject to this Declaration, and (iii) is signed and acknowledged by Declarant.

### **ARTICLE 3: PROJECT STRUCTURE & ORGANIZATION**

3.2 **The Declarant.** The Declarant shall mean Kartchner Land Management, Inc., a Utah corporation, and its successors and assigns. The Declarant has established the Project and has set forth a governance structure for the Project through the Governing Documents. The Declarant has reserved various rights in the Governing Documents with respect to the development and administration of the Project. The Declarant may exercise these rights throughout the period of time that the Declarant or any of its affiliates own real property in the Project or has an unexpired option to expand the Project pursuant to the Governing Documents. The Declarant may assign its status and rights as the Declarant under the Governing Documents to any affiliate, or person who takes title to any portion of the property subject to this Declaration for the purpose of development and/or sale.

3.3 **The Association.** The Elk Mountain Home Owners Association is the entity responsible for administering the Project in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any right and powers that may reasonably be implied under the Governing Documents. The Members of the Association shall be the Owners of Lots and Units within the Project, including the Declarant. The duties and powers of the Association shall relate the Project as a whole and the ownership, use, and maintenance of the Common Areas, including the imposition of assessments for such purposes.

3.4 **Neighborhood Associations.** The Declarant may (but shall not be required to) create one or more Neighborhood Associations within the Project from time to time to serve the special needs of Owners within such Neighborhoods. Nothing in this Declaration requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association. Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining any property which it owns or which its covenants designate as being for the common benefit of its members. If a Neighborhood Association fails to meet some or all of its responsibilities, the Association, in its discretion, may assume such responsibilities, the costs for which shall be an expense of said Neighborhood Association. The declarant of each Neighborhood Association shall be considered that Neighborhood Association's developer. A Neighborhood Association's declaration of covenants, conditions, and restrictions shall be approved by Declarant before it may become effective.

3.5 **Election Districts.** The Declarant has established three "Election Districts" designated by Lot type for the purpose of electing Board Members as set forth in the Bylaws. The Association's Bylaws also set forth Election District voting and procedures. The number of Election Districts shall not exceed the total number of Board of Directors. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which the Owners of particular Lot types are able to elect the entire Board. Notwithstanding anything to the contrary, the Declarant shall have the sole discretion to establish, modify, or terminate the Election Districts until the Control Period ends.

Ent 1209928 Bk 2051 Pg 1695



3.6 **Service Areas.** The Declarant or the Association may create and place Lots into one or more Service Areas in which the Lots share Common Areas, Limited Common Areas, or receive special benefits or services from the Association that it does not provide to all Lots within the Project. The creation of a Service Area, the designation of Lots subject to a Service area, and the scope of services to be performed for a Service Area shall be set forth in a Board resolution, or similar Association document. A Lot may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Lots of more than one housing type and may include Lots that are not contiguous. The Declarant may designate Service Areas and assign Lots to a particular Service Area at any time prior to the expiration of the Control Period. Declarant may also unilaterally amend Service Area boundaries. Following the Control Period, the Association Board may, by a resolution, designate Service Areas and assign Lots to them upon the affirmative vote of Owners exceeding sixty-seven percent (67%) of the Lots affected by the proposed designation.

3.7 **Allocated Interest.** Each Lot is entitled to a vote equal to its Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, and such votes shall be cast in accordance with the Bylaws. The Allocated Interest of each Lot shall have a permanent character and shall not be altered without the express affirmative written consent of at least sixty-seven percent (67%) of the total Allocated Interest of the Association. A recorded amendment or Supplement to this Declaration describing the approved changes is required to modify Allocated Interests.

Unless or until modified by an amendment to this Declaration, each Lot shall have an equal Allocated Interest and the Owner of each Lot shall be entitled to one (1) vote per Lot owned. Notwithstanding the foregoing, the Declarant shall have the power to unilaterally adjust the Allocated Interest of each Lot as Additional Land and Lots are added or withdrawn from the Project through an amendment or supplement to this Declaration.

3.8 **Plat.** The Declarant shall have the right to annex property to the Project and record plats for the development of property within the Project. The dimensions, descriptions, and identification of boundaries of any plat made subject to this Declaration, are hereby incorporated into and made a part of this Declaration. If any conflict exists between a Plat and this Declaration, the Declaration shall control.

#### **ARTICLE 4: ORGANIZATION & GOVERNANCE OF THE ASSOCIATION**

4.1 **Organization.** The Association shall serve as the governing organizational body for the Project. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act and the Governing Documents. The Association shall have all rights and powers granted to it under the Act and the Governing Documents.

4.2 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any

then-existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.

**4.3 Membership.** Membership in the Association shall at all times consist exclusively of Owners. Each Owner shall be a Member of the Association so long as such Owner has an ownership interest in a Lot within the Project and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.

**4.4 Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the secretary of the Association who shall maintain a record of ownership of the Lots. 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.

**4.5 Member Voting.** Each Lot is entitled to a vote based on its Allocated Interest in the Association, subject to any limitations on voting set forth in this Declaration and Bylaws, or limited by the Special Declarant Rights. Member voting shall be conducted as set forth in the Bylaws. If there is more than one Owner of a 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.

**4.6 Board of Directors.** The governing body of the Association shall be the Board of Directors. The Board of Directors shall make all decisions and take all actions on behalf of the Association unless a decision or action is specifically required by the Governing Documents to be subject to Owner vote. During the Control Period, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint all Board members. After the Control Period ends, the Board of Directors shall be elected by the Members of the Association pursuant to the election provisions of the Bylaws. The Bylaws may also set forth qualification requirements for serving on the Board. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board of Directors shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Association. The Board may retain professionals, including, without limitation, attorneys, accountants, managers, and bookkeepers to assist in any Board function.

Notwithstanding anything to the contrary in this Section, Declarant appointed Board members shall not be bound by qualification requirements or any other requirements in the Bylaws.

4.7 **Liability.** To the fullest extent permitted by applicable law, Board Members and officers 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 act, error, negligence, or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. If a Board Member 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 expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

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

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

4.10 **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 5: ASSOCIATION RIGHTS & RESPONSIBILITIES**

5.1 **General Rights.** The Association shall have the following rights and responsibilities in addition to all other rights set forth in the Governing Documents or provided by law. The Association may also take any action reasonably necessary to effectuate any such right, privilege, or purpose.

(a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;

(c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;

(d) The powers, duties, and obligations not reserved specifically to Owners;  
and

(e) 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.

Ent 1209926 Bk 2051 Pg 1698

5.2 **Maintenance.** The Board shall make provisions for completing all maintenance, repair, and replacement requirements of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the Project, in accordance with the general purposes specified in this Declaration. The Association may set maintenance standards for all areas within the Project and may assess any Neighborhood Association for the costs of maintenance or repair that the Association, in its reasonable discretion, determines is necessary to bring such areas in compliance with the Project's standards.

5.3 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.

5.4 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.

5.5 **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by the Declarant and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments. Upon approval of sixty-seven percent (67%) or more of the Allocated Interest of the Association, the Board shall have the authority to transfer title to Common Area real property owned by the Association to governmental entities for public use, or to individual third parties for private use. Any transfer of title to Common Area real property during the Control Period, shall also require Declarant approval.

5.6 **Entering Lots.** The Association acting through the Board or its duly authorized agent shall have the right at all times and upon reasonable notice of at least 48 hours (and at any time in case of an emergency) to enter into any Lot on the areas located outside the exterior boundaries of a Dwelling, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant, 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 8. Notice shall not be necessary in case of an emergency originating in or threatening such Dwelling or any other part of the Project, including the sound or sight of running water, the smell or sight of smoke, 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 Lot 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.

5.7 **Authority Over Neighborhood Associations.** The Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its Members or inconsistent with the Project's standards. The Association shall also have the power to require specific action to be taken by any Neighborhood Association in connection

Ent 1209928 Bk 2051 Pg 1699

with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated. If a Neighborhood Association fails to comply with the Association's requirements after reasonable notice, then the Association shall have the right to effect any remedial action and shall levy a Special Assessment on the Neighborhood Association to cover the enforcement costs incurred by the Association, including reasonable attorney fees.

**5.8 Hiring Managers and Delegating Responsibilities.** The Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. The Board has no authority to enter any management agreement or contract inconsistent with the terms of the Governing Documents.

**5.9 Rules.** The Association to promulgate and enforce Rules for the regulation and operation of the Project. This provision is intended to be interpreted broadly and permit the Association to adopt rules governing all activities and uses within the Project which the Association may legally enforce. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code §§ 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association. During the Control Period, the Declarant and the Declarant appointed Board (if any) shall be exempt from the rulemaking procedures of Utah Code § 57-8a-217.

**5.10 Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) suspend Owners' rights to utilize the amenities within the Project; (3) collect rents directly from tenants if Owners fail to pay Assessments; (4) bring suit for legal or equitable relief for any lack of compliance with any provisions of this Declaration or Rules promulgated by the Board or DRC; (5) exercise self-help or take action to abate a violation in any situation which requires prompt action, or within a reasonable time in a non-emergency situation after notice has been given to the offending Owner; and (6) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

**5.11 Discretion in Enforcement.** Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.

(a) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Association, and (2) whether to pursue a claim for an unpaid Assessment.

En 1209928 Bk 2051 Pg 1700

(b) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(c) If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action. The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

**5.12 Establishing Hearing Procedures.** The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners, or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents and in any such process shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least one week notice of the hearing to the Owners, and (2) a reasonable time period for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue. The Board may rely on any reasonable information and evidence in determining whether or not a violation of the Governing Documents has occurred, which may be obtained before, during, and after a hearing.

**5.13 Bulk Services Agreements.** The Association shall have the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

**5.14 Reserve Fund.** The Association shall establish and fund a reserve fund for the long-term maintenance, repair and replacement of Common Areas and shall obtain and update a Reserve Analysis as required in this Declaration and the Act. 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. The Declarant shall have no duty to obtain a Reserve Analysis or to maintain a reserve fund during the Control Period pursuant to Utah Code § 57-8a-211(10).

**5.15 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 subject to the limitations set forth in Article 16.

**5.16 Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.



## **ARTICLE 6: MAINTENANCE, REPAIR AND REPLACEMENT**

### **6.1 Maintenance by Owners.**

(a) Single-Family Lots. Each Owner of a Single-Family Lot shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all structures, landscaping, fences, and other improvements comprising the Owner's Lot and Limited Common Areas (if any) unless such maintenance responsibility is otherwise assumed by, or assigned to, the Association or such maintenance is designated to be performed as a Service Area.

(b) Townhome Lots. Each Owner of a Townhome Lot shall have the obligation to provide interior maintenance of the Dwelling, and the Limited Common Areas serving each respective Lot and Dwelling, including but not limited to the maintenance, repair, and replacement of driveways, interior structural elements of the Lot and Dwelling, foundations, windows, doors, and utility lines that solely service the Lot or Dwelling. The responsibility and cost to maintain, repair and replace, party walls, or other shared facilities not maintained by the Association shall be borne pro rata by the Lot Owners benefited thereby. Each Owner shall paint, repair, and otherwise maintain the interior of its Dwelling and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area. Owners may not install fencing on Townhome Lots.

(c) Twin Home Lots. Each Owner of a Twin Home Lot shall have the obligation to provide interior and exterior maintenance of the Lot and Dwelling, and the Limited Common Areas serving each respective Lot and Dwelling, including but not limited to the maintenance, repair, and replacement of exterior walls, roofs, gutters, down spouts, soffits, fascia, driveways, interior structural elements of the Lot and Dwelling, foundations, windows, doors, fences, and utility lines that solely service the Lot or Dwelling. The responsibility and cost to maintain, repair and replace, party walls, fences, or other shared facilities not maintained by the Association shall be borne pro rata by the Lot Owners benefited thereby. Each Owner shall paint, repair, and otherwise maintain the interior of its Dwelling and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area. If an Owner elects to install fencing or other barriers that prevent regular unrestricted Association access into side or rear lawn areas, then the Owner shall assume the full responsibility for such lawn maintenance.

**6.2 Maintenance by the Association.** The Association shall repair, maintain, replace, clean, and pay all expenses associated with all of the Common Areas, including the private roads. The Association shall also maintain the perimeter fences of the Project. The Association retains the absolute right to remove and replace any structure, item, fixture or condition in the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the

Ent 1209928 Bk 2051 Pg 1702



general purposes specified in this Declaration. The Board of Directors may determine, in its sole discretion, the scope of its maintenance obligations and an appropriate maintenance standard for the Common Areas, so long as those areas are maintained in the best interests of the Owners and the Project.

(a) Single-Family Lots. The Association shall not be responsible for the repair and maintenance of any Single-Family Lot or the structures located on a Single-Family Lot, but the Association may assume the maintenance responsibility for any portion or facility of the Single-Family Lots upon designation of the Lots as a Service Area, or upon the Board's determination that the level and quality of maintenance then being provided is not consistent with the standards set forth for the Project. The costs incurred by the Association in performing maintenance for the Single-Family Lots, which maintenance solely benefits the Single-Family Lots, shall be accounted for and assessed as a Service Area Assessment.

(b) Townhome Lots. The Association shall maintain: (i) the common landscaped areas surrounding the townhome buildings; (ii) the Common Area sidewalks and private roads within the townhome Service Area, including snow removal; (iii) the exterior walls, roofs, gutters, down spouts, soffits, and fascia of the townhome buildings, (iv) private utility lines owned or controlled by the Association that serve more than one Dwelling, (v) landscape and drainage easements owned or controlled by the Association, and (vi) the personal property owned by the Association. The costs incurred by the Association in performing maintenance for the Townhome Lots, which maintenance solely benefits the Townhome Lots, shall be accounted for and assessed as a Service Area Assessment.

(c) Twin Home Lots. The Association shall maintain: (i) the common landscaped areas surrounding the twin home buildings; (ii) the Common Area sidewalks and private roads within the twin home Service Area; and (iii) private utility lines owned or controlled by the Association that serve more than one Dwelling. The Association shall not be obligated to perform any exterior maintenance of the twin home Dwellings. The costs incurred by the Association in performing maintenance for the Twin Home Lots, which maintenance solely benefits the Twin Home Lots, shall be accounted for and assessed as a Service Area Assessment.

(d) Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall not be obligated to maintain any road, utility, park, parcel, or utility system or component which is owned or maintained by a municipality.

**6.3 Maintenance of Neighborhood Associations.** Each Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, and the standards for the Project set forth by the Declarant during the Control Period, or by the Association's Board of Directors following the expiration of the Control Period.

**6.4 Party Wall and Shared Roof Maintenance.** By acceptance of a deed to a Townhome Lot or a Twin Home Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Walls and shared roofs be maintained in good condition and repair to preserve the integrity of the Dwellings 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 and shared roof

appurtenant to their Dwelling. 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 Owner's respective Dwelling. With respect to structural components of the Party Walls and shared roofs, the Owners benefitted by a Party Wall or shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If the need for maintenance or repair of a Party Wall or shared roof 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. If there is a dispute over the responsibility for maintenance or repair of a Party Wall or shared roof, the Association may, but shall not be required to, intervene and determine each Owner's responsibility. The Association shall have the powers set forth below to remedy any neglect in performing Party Wall or shared roof maintenance responsibilities

**6.5 Maintenance Caused by Owner Negligence.** If the need for maintenance or repair is caused by the willful or negligent acts of an Owner, or through the willful or negligent acts of the Occupants, 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 to which such Lot is subject.

**6.6 Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Lot or Dwelling as required in the Governing Documents or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a reasonable period of time as determined by the Board. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot, including reasonable attorney fees.

## **ARTICLE 7: ARCHITECTURAL STANDARDS**

**7.1 General.** All, landscaping, structures, Dwellings, improvements, and other items placed on a Lot are subject to the standards for design, landscaping, and aesthetics adopted pursuant to this Article and the approval procedures set forth in this Article.

**7.2 Architectural Review Required.** Without the prior approval of the Association (or the Declarant during the Control Period), an Owner may not (1) install or build any new structure, fence, landscaping, or Dwelling; (2) make alterations, upgrades, repairs, or modifications to any part of the exterior of any structure or Dwelling; (3) install or alter any new or existing exterior feature such as a driveway, walkway, fence, landscaping or anything else that alters the exterior appearance of the Lot; and (4) alter or modify the finished grade to a Lot, or alter the ground level, slope, pitch or drainage patterns of any Lots as fixed by the

original finish grading. This provision is intended to be read as broadly as possible to require approval before any exterior work is performed on a Lot, including changes to landscaping.

Notwithstanding anything to the contrary herein, until the expiration of the Control Period, the Declarant shall have sole authority and responsibility to approve the plans for the construction of all Dwellings and landscaping of each Lot.

**7.3 Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance for the improvements within the Project.

(a) The Declarant may prepare initial Design Guidelines which may contain general provisions applicable to the entire Project as well as specific provisions that vary among uses, housing types, or locations within the Project.

(b) The Declarant shall have sole and full authority to amend the Design Guidelines during the Control Period. The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the Association or another entity. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

(c) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and DRC. The Design Guidelines may also designate landscaping requirements and may require complete landscaping of Lots prior to occupancy. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

(d) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

**7.4 Design Review Committee.**

(a) The Design Review Committee ("DRC") shall serve as an architectural review board and shall regulate the external design, appearance, and location of any structure and landscaping on any Lot so as to enforce the architectural provisions of the Declaration or Design Guidelines as may be adopted by the Board or Declarant.

(b) During the Control Period, the Declarant shall act as the DRC for the Project and may delegate its authority to act as the DRC to one or more individuals or entities.

(c) A Design Review Committee may be appointed by the Board. Such committee shall consist of an uneven number of persons of at least three (3) members, but may include more members at the discretion of the Board. The Board need not appoint a Design Review Committee. If no such committee is appointed, the Board shall have all powers of the DRC and may act in all ways and have all powers otherwise given to the DRC.

(d) The DRC need not be composed of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. Board members may serve

on the DRC. The DRC shall be a Sub-Committee as defined in the Bylaws, and shall act in accordance with the requirements of Sub-Committees.

(e) The DRC shall have the Board's right of entry to verify compliance with this Article. The DRC shall have no duty or obligation to make inspections; however, nothing herein shall prevent the DRC from making inspection prior to, during, or after construction. The DRC may inspect any work performed in the Project to determine its compliance with the Design Guidelines and the Governing Documents.

(f) Members of the DRC shall serve for a term of one (1) year, and may serve for consecutive terms of service as appointed by the Board. Any vacancy on the Committee may be filled by the Board to serve the remainder of the term of the originally appointed member(s). The Committee may act even though a vacancy has not been filled. Any member of the DRC may be removed at any time by the Board with or without cause.

(g) The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

**7.5 Design Review Approval Procedures.** Unless the Design Guidelines provide otherwise, no structure, improvement, or exterior remodel of any kind whatsoever shall be erected, placed, moved onto, or commenced without the prior written approval of the Declarant or the DRC.

(a) The Declarant or the Board may adopt Rules relating to the submission of plans and specifications in the Design Guidelines. Unless and until the Board adopts such Rules, Owners must submit such plans and specifications as the DRC may reasonably require, but shall in all cases include the following:

- (1) A complete set of plans and specifications;
- (2) A site plan showing the location of all proposed and existing structures on the Lot;
- (3) Exterior elevations for the proposed structures;
- (4) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures; and
- (5) Description of the plans and provisions for landscaping, grading and water drainage.

(b) In reviewing each application, the DRC may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment; the building bulk or mass of any buildings or structures within the Project; building location with respect to topography, existing trees; finished grade elevations; and harmony of landscaping with the natural setting and surroundings. DRC decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

(c) The DRC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall

not be subject to judicial review so long as they are made in good faith and in accordance with required procedures.

(d) No approval is required for interior modifications that do not affect the exterior of Dwellings or structures, although the Board may still adopt Rules relating to the use of Common Area or roadways for staging and other construction needs.

(e) An Owner or Neighborhood Association may complete any maintenance to the exterior of a Dwelling or other approved structure on a Lot, to the extent that such maintenance obligation is the responsibility of the Owner or Neighborhood Association, if such maintenance will not change the appearance of the already-built and approved Dwelling or structure.

(f) As part of any approval, the DRC may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

(g) If the Declarant or DRC shall fail to act upon any written request submitted to it within thirty (30) days after a complete submission of documents in a form acceptable to the DRC, such request shall be deemed to have been denied.

**7.6 Appeals.** An applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than fifteen days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the DRC's notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than thirty days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

**7.7 Noncompliance.** If at any time the Declarant, DRC, or Board find that any work was not done in substantial compliance with plans approved by the DRC or was undertaken without first obtaining approval from the DRC, written notice shall be sent by the DRC to such Owner specifying the noncompliance and requiring the Owner to cure such noncompliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the noncompliance or to enter into an agreement to cure on a basis satisfactory to the DRC within said thirty (30) day period or any extension thereof as may be granted, the Board may, at its option, cause the non-complying improvement to be removed or the noncompliance to be cured. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the DRC and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorney fees and costs. The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the noncomplying Lot for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Individual Assessment.

**7.8 No Waiver of Future Approvals.** The approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval. Any failure of the DRC or Board to enforce the requirements of this Article or the Design Guidelines shall not preclude any future actions to enforce such requirements.

**7.9 Expenses of Design Review Committee.** The DRC may charge reasonable fees to Owners for the processing of any request, plans, or specifications including consultation with a professional. The Association shall pay any ordinary or reasonable expense of the architectural review.

**7.10 Delegation of Authority.** The Board may delegate any of the DRC's responsibilities to the design review committee or board of a Neighborhood Association when it reasonably believes the Neighborhood Association will carry out the intent of any Design Guidelines and the Declaration. Any such delegation may be revoked at any time by the Board.

**7.11 Variances.** The DRC may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstruction, hardship, or aesthetic or environmental considerations justify such a variance, however, the DRC shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRC from denying a variance in other similar circumstances. A variance requires the Declarants written consent during the Control Period and thereafter, requires the Board's written consent. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

**7.12 No Liability.** Neither the Declarant, the DRC, the Board, the Association, nor any of its Members shall be liable for damages to any person submitting any plans for approval, or to any Owner within the Project, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. The DRC shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The DRC shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning, or other land use regulations; (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer, or any other person, (c) construction means, methods, techniques, sequences, or procedures, safety precautions, or subsequent loss, damage, or failures due to soil or any other natural or man-made conditions that may exist, or (d) any failure to carry out any construction in accordance with plans or specifications.

**7.13 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 Lots, 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 Dwellings within the Project. The Declarant may use vacant Lots and other areas to be used for parking in connection with the showing of model homes or for vehicles necessary for development and construction activities.

## **ARTICLE 8: BUDGET & ASSESSMENTS**

8.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of: promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.

8.2 **Budget.** The Board is authorized and required to adopt an annual budget no later than thirty (30) days prior to the beginning of each fiscal year. The Board may revise that budget from time to time as the Board deems appropriate. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate. The budget shall be available to Owners, upon request, no later than thirty (30) days after the adoption of the proposed budget or any revised budget. Owners may disapprove a proposed budget pursuant to the provisions of the Act. During the Control Period, members may not disapprove a budget.

(a) The budget shall track and estimate the expenses associated with each designated Service Area separately from the Common Expenses in order to allocate these expenses as set forth in Section 8.8. "Service Area Expenses" shall mean and include those actual and estimated expenses incurred or to be incurred by the Association for the benefit of the Lots within each designated Service Area which may include costs of snow removal, landscaping, construction, insurance, maintenance, and any repair and replacement of the Common Area facilities appurtenant to the Service Area, structures and adjacent areas. If the Service Area responsibilities require the maintenance or repair of long-term Common Area facilities, then the Service Area Expenses shall include contributions to a reserve fund for the repair and replacement of such facilities. Service Area reserves shall be accounted for and kept separate from the Association's primary reserve fund. Separate accounting and financial reporting shall be maintained for each Service Area.

8.3 **Payment of Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's Regular Assessment and any applicable Service Area Assessment in quarterly, or monthly installments in the Board's discretion. In the discretion of the Board, the Association may require Neighborhood Associations to collectively pay for all Regular Assessments attributable to the Lots within the Neighborhood Association.

8.4 **Adjustments to Assessments.** In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet Common Expenses or Service Area Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of



the adjustment, and unless modified by the Board, each Owner shall thereafter pay to the Association the Owner's adjusted Assessment.

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

**8.6 Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner as determined by the Board of Directors.

**8.7 Regular Assessment.** The Regular Assessment shall be paid by all Lots within the Project that are subject to assessment. The Regular Assessment shall be computed by subtracting the Service Area Expenses from the total Common Expenses of the Association and then allocating this figure to all Lots subject to assessment based on the Allocated Interest of each Lot.

**8.8 Service Area Assessment.** The Service Area Assessment shall be paid by all Lots within a designated Service Area that are subject to assessment in addition to the Regular Assessment. There is no requirement that Service Area Assessments be uniform between Service Areas. The amount of the Service Area Assessment shall be determined by allocating the budgeted Service Area Expenses to all Lots within the Service Area that are subject to assessment based on the Allocated Interest of each Lot. At no time shall a Service Area Assessment be charged or assessed to Lots outside of the designated Service Area. The amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area from which they were collected.

**8.9 Special Assessments.** The Board may levy a Special Assessment 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 Regular Assessments or Service Area Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other 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 determined by the Board and provided in the notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Control Period without Owner approval. Special Assessments shall be allocated based on each Lot's Allocated Interest.

**8.10 Individual Assessments.** Individual Assessments may be levied by the Association against a particular Lot and its Owner for: (a) Costs of providing services to the Lot upon request of the Owner; (b) Costs incurred in bringing an Owner or the Owner's Lot or Dwelling into compliance with the provisions of the Governing Documents; (c) Fines, late fees, collection charges, interest, and all other costs incurred in enforcing the Governing Documents

against an Owner or his Occupants; (d) Any other charge designated as pertaining to an individual Lot in the Governing Documents; and (e) Attorney fees, costs, and other expenses relating to any of the above, regardless of whether a lawsuit is filed. 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 Owner's or his/her Occupants' negligence.

**8.11 Reinvestment Fee.** The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established, the following terms and conditions shall govern Reinvestment Fees:

(a) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), but excluding the initial sale or Transfer to Declarant, or an affiliate or successor of Declarant, the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

(b) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46.

(c) 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.

(d) All transfers of Lots from Declarant to a Declarant related entity shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related entity and if a Reinvestment Fee applies.

**8.12 Declarant's Exemption From Assessments.** No Lot(s) owned by the Declarant, or a Declarant affiliated entity, shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments. The Declarant shall have the sole discretion to determine whether a Lot is owned by one of its affiliates and whether such Lot is subject to assessment.

**8.13 Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Statement described in Section 8.10 below) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

**8.14 Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. For any valid request, and upon payment of a fee of not more than twenty-five dollars (\$25.00), the Association shall provide a written statement of account within a reasonable time.

A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.

**8.15 Account Payoff Fee.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

**8.16 Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Board of Directors.

**8.17 Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments, refund the excess to the Owners in proportion to the Allocated Interests of each Lot, or take other action with the funds permitted under this Declaration, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

**8.18 No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amounts by Owners shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

**8.19 How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest (or oldest) charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

**8.20 Loans.** Upon approval of Owners holding more than thirty percent (30%) of the Allocated Interests, the Association may borrow money and may provide such security as necessary for the loan, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Lot shall be security for any loan to the Association without that Owners' consent.

## **ARTICLE 9: NONPAYMENT OF ASSESSMENTS & LIABILITY**

**9.1 Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article.

**9.2 Collection Charges and Interest.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply:

En 1209928 Bk 2051 Pg 1712

Assessments shall be due and payable on the first (1<sup>st</sup>) day of each month and shall be considered late if not received by the tenth (10<sup>th</sup>) day of the month. Accounts with an unpaid balance after the tenth (10<sup>th</sup>) day of each month shall be charged a late fee of thirty-five dollars (\$35.00). In addition to late fees, interest may accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at eighteen percent (18%) per annum. The Association may also assess to the Owner a collection charge, late fee, and any other reasonable fee charged by a Manager related to collections.

**9.3 Joint and Several Liability of Owner and Future Owners.** The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Lot.

**9.4 Lien.** The Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, attorney fees, court costs, and other costs of collection (which shall include all collection costs and shall not be limited by those costs that may be awarded by a court under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien for fines shall arise when (1) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (2) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over every other lien and encumbrance on a Lot except: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.

**9.5 Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

**9.6 Foreclosure.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lots in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of

the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

9.7 **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.

9.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to vote, (2) access to the amenities in the Project, and (3) rights to receive a utility or other service paid for as a Common Expense.

9.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any Occupant in a Dwelling for any delinquent Assessment balance more than sixty (60) days late. Each Occupant, by moving into the Project, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.

9.10 **Attorney Fees.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessarily related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

9.11 **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, Lenders 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 any failure to pay Assessments.

## **ARTICLE 10: PROPERTY RIGHTS IN LOTS & COMMON AREA**

### **10.1 General Easements.**

(a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and facilities, subject to any other restrictions related to such use. Such right and nonexclusive license shall be appurtenant to and shall pass with title to each Lot and in no event shall such appurtenant rights be separated therefrom. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable under the Governing Documents. All such rights shall be subject to any Rules established by the Board of Directors.

(b) The Association (and Declarant during the Control Period) shall have nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and to maintain, repair, replace, or effectuate the restoration of the Common Area and facilities that the Association is responsible for maintaining which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and facilities for purposes necessary for the proper operation of the Project.

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

**10.3 Easements for Future Development.** The Declarant hereby reserves for itself and its duly authorized agents, successors, and assigns the non-exclusive right and power to grant any homeowners or condominium association it may designate and their respective



members an easement over the Common Areas for the purpose of enjoyment, use, and access. Any Neighborhood Association granted such rights shall be obligated to share in the costs of the maintenance of such areas as reasonably determined by the Declarant.

**10.4 Easements Reserved by Declarant.** The Declarant hereby reserves to itself and its assigns the following easements:

(a) The right to install, inspect, maintain, repair, and replace any utilities and infrastructure to serve the Project, including without limitation electricity, water, sewer, phone, communications cables, and storm water drainage systems for the Project and land that becomes part of the Project.

(b) The right to establish and construct facilities and improvements on, over, across, under, and through the Common Areas of the Project including, but not limited to, access roads, streets, sidewalks, pathways, trails, clubhouse, pool, playgrounds, mailbox structures, basketball courts, sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage.

(c) The right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any property within the Project, including Dwellings and condominium units and a perpetual non-exclusive easement of access throughout the Project reasonably necessary to exercise such right.

(d) The right to revegetate and maintain the landscaping in all areas of the Project to the extent necessary, in Declarant's judgment, to beautify the Project, to preserve and protect its appearance, to control erosion, or to restore the property within the Project to its natural condition. Declarant shall also maintain an easement to construct, operate, maintain, repair and replace storm detention and water quality structures in the Project to adequately control surface water.

(e) The right to construct and maintain offices, prefabricated structures, or other structures for administrative, sales and promotional purposes relating to the Project during the Control Period.

(f) Declarant may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Project to such third parties as it may designate from time to time.

**10.5 Easements for Encroachments.** If any portion of the Common Area or any common improvement encroaches upon any Lot, or if any structure or fixture encroaches unintentionally upon any other Lot or the Common Area as a result of the manner in which improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.



**10.6 Limitation on Easement.** An Owner's equal, undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:

(a) The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Lot remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods, if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access, and to have rights of ingress and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

(d) The right of the Association to dedicate or transfer any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Declarant during the Control Period, or afterwards by the Association; provided that such dedication or transfer following the Control Period must first be approved by the affirmative vote or written consent of a majority of all Owners

**10.7 Party Wall and Shared Roof Easement.** Each Owner of a Townhome Lot or a Twin Home Lot hereby acknowledges and agrees that a Party Wall or shared roof may presently encroach upon or overlap the Owner's Lot. Each Owner hereby grants to the adjoining Owner of the other Lot that shares the Party Wall, or shared roof, an easement over and upon its Lot for the purpose of maintaining the Party Wall and shared roof. By accepting a deed to a Lot, 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 and shared roof and the performance of each Owner's obligation to maintain and repair the townhome structure.

**10.8 Views.** Views from Lots and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to any Lot or the Project. The Declarant and the Association shall have the right to add trees and other landscaping throughout the Project without being subject to maintaining any Owner's view.

#### **ARTICLE 11: USE LIMITATIONS & CONDITIONS**

**11.1 Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law through Association Rules. Unless otherwise designated in the Rules, "For Sale" or "For Rent" signs not exceeding 5 square feet may be placed on Lots. The Declarant shall not be subject to any sign restrictions adopted by the Association.

**11.2 Nuisance.** No noxious, unlawful, or offensive activity shall be carried on within the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal body. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would 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 suspended, or cause any company issuing such insurance to refuse renewal thereof. The Board may adopt rules that further describe the activities that are deemed to be nuisances within the Project and the Board shall have the sole authority and discretion to determine whether a particular activity is a nuisance. Any violation of the Governing Documents shall be deemed a nuisance.

**11.3 Temporary Structures.** No structure or building of a temporary character, including a tent, trailer, or shack, shall be placed upon the Project or used therein unless it is approved by the Board of Directors. The Declarant shall be exempted from this provision during the Control Period. Trailers, temporary construction offices, sheds, and other similar temporary structures may be permitted for construction purposes during the actual construction of structures or improvements if approved by the Declarant or the DRC.

**11.4 Parking.** Vehicles shall not be parked on the sides of the private roads, at an entrance to or in front of a garage or walkway, or at any other location within the Project which would impair vehicular or pedestrian access, or snow removal. Common Area parking stalls (if any) shall be subject to and governed by Association Rules, and may be assigned by the Board. The Association may charge a fee for the use of any Common Area parking stalls. The Association is hereby empowered to establish Rules governing the parking within the Project including the designation of "no parking" areas. The Association is not obligated to treat all areas equally and may adopt different parking rules for different areas within the Project. Rules relating to the parking of vehicles may include, but are not limited to: (1) Rules allowing or causing to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (3) restrictions on the time period and duration of temporary parking, (4) restrictions on performing vehicle maintenance or repair outside of enclosed garages, (5) restrictions on recreational vehicle parking, (6) restrictions on garage storage that obstructs the full parking capacity of the garage, and (7) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners whose guests violate such Rules. The Association shall have the right to perform ongoing inspections of Owner's Lots, driveways, and garages to ensure compliance with this Section or any Rules adopted pursuant to this Section.

**11.5 Recreational Vehicles.** The Board is authorized to adopt Rules governing the parking of boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like within the Project. Unless otherwise designated in the Rules, such recreational vehicles must be parked in garages or behind the front plane of the Dwelling in the side yard. No non-operating vehicles of any type may be parked on a Lot at any time.

**11.6 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 Dwelling or appurtenant structures.

**11.7 Trash Containers.** All refuse, garbage and trash shall be kept at all times in covered container containers in a type and style approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection for a reasonable amount of time as determined by the Board. The Board may adopt additional Rules regulating the removal, accumulation, and placement of any rubbish, debris, or unsightly material, conditions, or items. The Board may also adopt additional Rules for the storage and concealment of trash containers.

**11.8 No Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture, portable barbecue grills, and other items approved by the Board. The Board may adopt Rules that expand or clarify the restrictions set forth in this section.

**11.9 Animals.** Domestic pets may be kept on Lots or in Dwellings in conformance with local government requirements. The Board may adopt additional Rules for the regulation of animals and pets within the Project, including but not limited to, the use of Common Areas by animals, the liability of individual Owners for damage caused by their animals, registration requirements, the use of leashes, and fines for the violations of such rules. Neighborhood Associations may also adopt restrictions relating to animals and pets. When Association and Neighborhood Association restrictions or requirements overlap, each Lot shall be subject to the most restrictive provisions contained therein. No animal may be kept that causes a nuisance or threatens the health or safety of other Owners. The Association may levy fines for Rule violations and assess Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet.

**11.10 Residential Occupancy.** Each Lot and Dwelling shall be used only as a single-family dwelling. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or Dwelling except with the prior written consent of the Board and applicable governmental entities. Notwithstanding the foregoing, activities otherwise prohibited by this Section are permitted without Board approval if only normal residential activities would be observable outside of the Dwelling; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

**11.11 Leases.** The leasing of Lots or Dwellings is permitted. The Board may adopt Rules to regulate the leasing of single-family Dwellings which may include, but are not limited to: minimum lease terms, requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default. In the event that the Owner 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. All costs incurred by the Association to enforce the terms of the Governing Documents against a tenant shall be assessed to the Owner as an Individual Assessment. The leasing restrictions set forth in this Section shall not apply to the Declarant or a Declarant affiliated entity.

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

**11.13 Landscape Maintenance.** The Association may adopt Rules regulating Owners' or Neighborhood Associations' obligation for the landscape maintenance of their Lots including standards for repairs, weed control, etc. The Association may charge fines to each Lot for a failure to maintain landscaping in accordance with Association standards. No material change may be made in the slope, pitch or drainage patterns of any Lot, or alter grading in a manner that increases water drainage onto adjacent Lots without obtaining the prior written approval of the DRC. Grading shall be maintained at all time so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess water.

**11.14 Lighting.** The Board may adopt rules setting forth exterior lighting standards and regulation throughout the Project. If such rules are adopted, then exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board or the DRC.

**11.15 Solar Energy Systems.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Dwelling, or adjacent buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the DRC as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The DRC or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

**11.16 Smoking.** Smoking is prohibited within all Dwellings or Units that are attached to another Dwelling or Unit through a party wall or otherwise. Smoking is also prohibited on all Common Areas located within any building or structure, and all exterior Common Areas located within 25 feet of any building or structure within the Project. Without limiting the

generality of the foregoing, this prohibition applies to all private Units and all of the Association's Common Area including paths, gardens, landscaped areas, hallways, parking lot, roofs, balconies, etc. Smoking is defined as, and includes, the carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars, pipes, hookahs, and electronic vaping devices. Each Owner is responsible to ensure that said Owner and his or her tenants, guests, and invitees comply with this restriction. Violations of this smoking restriction may result in a fine pursuant to the Association's Rules and the fine schedule as adopted and amended from time to time by the Board.

**11.17 Variances.** The Declarant or 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 Term and Condition obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

**11.18 Hazardous Substances.** Owners shall comply with applicable environmental laws, and shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances, on or within the Project, that are not properly controlled, safeguarded, and disposed of. No one shall permit anything to be done or kept on a Lot or Dwelling which will result in the cancellation of insurance or which would be in violation of any public law, ordinance, or regulation. Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from, or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner.

## **ARTICLE 12: INSURANCE**

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

**12.1 Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand-alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. The Association's insurance premiums shall be a Common Expense.

**12.2 Property Insurance – Common Area.** To the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Association's obligation to maintain, the Association shall maintain a policy of

property insurance covering the Common Area, including all buildings and improvements, building service equipment, and fixtures thereon.

(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 fixture, improvement, or betterment installed in or to or otherwise permanently part of or affixed to Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and 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 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 Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000), an amount not less than ten thousand dollars (\$10,000).

**12.3 Property Insurance – Attached Dwellings.** The Association shall maintain a blanket policy of property insurance covering all buildings with attached Dwellings in the Project, including all fixtures and service equipment as provided in the Act.

(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 fixture, improvement, or betterment installed in or to the Dwelling or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Dwellings, or Limited Common Areas, 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 Dwellings) 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 (if available): (i) "Inflation Guard Endorsement," (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of one million dollars (\$1,000,000) or the insurable value of the building containing the equipment.

(f) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(1) The Association's policy provides primary insurance coverage, and: (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.

(2) An Owner that has suffered damage to any combination of a Dwelling or a Limited Common Area appurtenant to a Dwelling ("Dwelling 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 Dwelling Damage for that Dwelling to the amount of the deductible under the Association's property insurance policy; and

(3) If an Owner does not pay the amount required under this Subsection within 30 days after substantial completion of the repairs to, as applicable, the Dwelling or the Limited Common Area appurtenant to the Dwelling, the Association may levy an assessment against the Owner for that amount.

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

(h) Deductible Notice. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would



otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(i) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

(j) The costs of the insurance premiums for attached Dwellings shall be allocated to the applicable Service Area.

**12.4 Earthquake Insurance.** The Association may purchase earthquake insurance as the Board deems appropriate.

**12.5 Flood Insurance.** If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, the Board may purchase flood insurance covering the Project or that portion of the Project located within the Special Flood Hazard Area. If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

**12.6 Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owners' membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

**12.7 Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board Members, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board 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.

**12.8 Theft and Embezzlement Insurance.** The Association may obtain insurance covering the theft or embezzlement of funds that shall provide coverage for: (1) an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) theft or embezzlement of funds by: (a) Officers and Board members, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.

Ent 1209928 Bk 2051 Pg 1724

**12.9 Workers' Compensation Insurance.** The Board shall purchase and maintain in effect workers' compensation insurance for all employees, if any, of the Association to the

extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.

**12.10 Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association and shall not be payable to a holder of a security interest. 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 and is 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 Lots. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

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

**12.12 Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall be insured under the Association's property and CGL insurance policies as required herein.

**12.13 Waiver of Subrogation Against Owners & Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Lot Owner if an Owner resides in the Lot, and the Association's agents and employees.

**12.14 Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against any Person or entity at fault for the loss.

**12.15 Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to the Association.

**12.16 Owner Insurance.** Each Owner shall be responsible to purchase and maintain in force appropriate hazard, content, and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association is not required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

Ent 1209928 Bk 2051 Pg 1725

### **ARTICLE 13: DESTRUCTION OF IMPROVEMENTS**

**13.1 Reconstruction.** In the event of partial or total destruction of any Common Area

structure, improvement or fixture within the Project, the Board may contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Common Area in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. In doing so, the Board shall determine and liquidate the amount of insurance proceeds, if any. All costs of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

**13.2 Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer with regard to any totally or partially destroyed Common Area structure or improvement, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

**13.3 Repair of Lots.** Installation of improvements to, and repair of any damage to those structures, improvements, facilities and elements of privately owned Lots shall be made by and at the individual expense of the Owner of each affected Lot and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable, and in a lawful and workmanlike manner.

**13.4 Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of insurance proceeds allocated to such Lot.

#### **ARTICLE 14: AMENDMENTS**

**14.1 Amendments by Declarant.** So long as the Declarant owns one or more Lots in the Project or any part of the Additional Land, the Declaration and the Plat may be amended or supplemented solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Lots in the Project or any part of the Additional Land.

**14.2 Amendments by Association.** After all Additional Land has been annexed into the Project and after all of Declarant's Lots have been sold to third parties, this Declaration and the Plat may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. 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 vote 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 vote 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 used for voting shall be required. Notwithstanding, the foregoing, the Members' authority to amend Articles XII and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVI shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

## **ARTICLE 15: SPECIAL DECLARANT RIGHTS**

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

- (a) Any Improvements shown on the Plat or that Declarant elects to include within the Project;
- (b) Any buildings, Dwellings, or structures upon all or any portion of any additional land added to the Project; and
- (c) Any other buildings, structures, or improvements that Declarant desires to construct on the Project, or any other real estate owned by Declarant, regardless of whether the same ever becomes part of the Project.

15.2 **Expandable Project.** The Declarant reserves the right and option to expand the Project by the annexation of Additional Land, or to contract the Project by the withdrawal of currently encumbered land, in accordance with the provisions of this Section.

- (a) The Project may be expanded by the addition of other real property designated by Declarant, such real property or portions thereof where applicable being referred to as "Additional Land".
- (b) Expansion or contraction 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.
- (c) Declarant's right to expand or contract the Project shall not expire until the Declarant elects in writing to not add Additional Land to the Project or the Control Period ends.
- (d) Additional Land may be added or withdrawn in total or in part, in any order, by using any procedure or manner as Declarant may determine.
- (e) To submit or withdraw Additional Land to the Project, the Declarant shall record a Supplemental Declaration in the office of the Cache County Recorder setting forth that an expansion or contraction of the Project has occurred. Such Supplemental Declaration shall include: (i) a description of the Additional Land added or withdrawn from the Project; and (ii) shall reference this Declaration and state that the provisions of this Declaration apply to the Additional Land, or that the Additional Land is no longer subject to the provisions of this Declaration.

15.3 **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 entire Control Period, or for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Dwellings, and signs advertising the Project or any Dwelling at any location in the Project;
- (b) the right to use easements throughout the Common Areas as set forth in this Declaration;

Ent 1209928 Bk 2051 Pg 1727

(c) the right to dedicate the roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;

(d) the right to transfer Common Areas, including parks, trails, open space or other parcels of real property to the local government or municipality;

(e) the right to designate parcels for religious use and convey title to those properties to religious institutions.

(f) the right to convert any part of the Project to a different regime of residential or commercial ownership;

(g) the right to create or designate additional Common Area or Limited Common Area within the Project;

(h) the exclusive right to act as the Board of Directors, or appoint or remove Board members during the Control Period;

(i) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;

(j) the right to set all Assessments for the Association including Regular, Special, Individual and Service Area Assessments;

(k) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;

(l) the right to withdraw land from the Project at any time during the Control Period;

(m) the exclusive right to amend the Declaration, Bylaws, Plat and Rules of the Association without approval from any Members;

(n) the right to create, amend, change, or modify any Plat, subject to necessary approvals from any applicable municipality or government agency;

(o) the right to create Service Areas and assign Lots thereto;

(p) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

(q) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217;

(r) Declarant shall be exempt from all Association Rules as permitted by Utah Code § 57-8a-217; and

(s) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Control Period, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Control Period.

En 1209928 Bk 2051 Pg 1728

**15.4 Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the expiration of the Control Period. Declarant may

exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. 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.

**15.5 Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Special 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.

**15.6 Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Control Period, 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 Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally constructed or created by Declarant.

**15.7 Transfer of Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Cache County Recorder.

**15.8 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 prior to the contracting for the conveyance of the Lot to a purchaser.

**15.9 Voting.** During the Control Period, any matter voted upon by the Owners shall not become effective unless the matter is approved in writing by the Declarant.

**15.10 Easements Reserved to Declarant.**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area 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.

(b) 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.

(c) Easement granting the privilege of entering upon the Common Areas for

Int 1209928 Bk 2051 Pg 1729



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.

(d) 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 Common Area for the storage of building supplies and materials, parking of construction vehicles, erection of temporary structures, trailers, improvements or signs necessary or convenient to the development of the Project, 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.

(e) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

(f) 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.

**15.11 No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered without the written consent of the Declarant until at least six (6) years have passed after the Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

## **ARTICLE 16: DISPUTE RESOLUTION**

### **16.1. Alternative Dispute Resolution Without Litigation.**

(a) **Bound Parties.** The Declarant; the Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

Ent 1209928 Ik 2051 Pg 1730

(b) Claims. As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association or ACC under the Design Guidelines and other provisions hereof, which shall not be subject to review and shall not be subject to this Article.

(c) Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X of this Declaration (relating to the Design Guidelines);

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 16.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

(vii) any suit or dispute involving a governmental entity as a party.

#### **16.2. Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

(v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 16.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) Negotiation. The Claimant and Respondent 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 negotiating a resolution of the Claim.

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

Ent 1209928 Bk 2051 Pg 1732

(e) Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

**16.3. Initiation of Litigation by Association.** The requirements of this Section are intended to be in addition to those requirements set forth in § 57-8a-229 of the Act. After expiration of the Control Period the Association may not bring a legal action against the Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Control Period unless:

- (a) The Right to Cure period set forth in Section 16.2(b) above has expired;
- (b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total Allocated Interests of the Association:
  - (i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 16.4(a) and (b) below.
- (c) the Association provides each Owner with the items described in Section 16.4(a) and (b), below;
- (d) the Association establishes a trust account, described in Section 16.4(c) below; and
- (e) the Association first goes through the procedures described in Section 16.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.
- (f) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:
  - (i) initiated by Declarant during the Control Period on behalf of the Association;
  - (ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
  - (iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
  - (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
  - (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

Ent 1209928 Bk 2051 Pg 1733

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Control Period. Any such amendment shall also be approved by a vote of 67% of the Allocated Interests of the Association.

16.4. **Informed Vote.** Before the Owners, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide each Owner with:

(a) A written notice stating:

- (i) that the Association is contemplating legal action;
- (ii) the percentage vote required for approval of the litigation;
- (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
- (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

(b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:

- (i) The likelihood that the legal action will succeed;
- (ii) The likely amount in controversy in the legal action;
- (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
- (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Lot buyer's ability to obtain financing for a Lot due to a pending legal action.
- (v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

(c) Before the Association commences any legal action as authorized above, the Association shall:

- (i) allocate an amount equal to 25% of the cost estimated to resolve the Claim not including attorney fees; and
- (ii) place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 16.3 and 16.4 do not apply if the Association brings a legal action that has an amount in controversy of less than \$25,000.00.

16.5. **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound 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 attorney fees and costs

expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

**16.6. Owner Warranties.** The Declarant may provide certain warranties to the Owners related to a Lot purchased. The first Owner of a Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

**16.7.** Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.

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

**16.9.** The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Control Period.

**16.10 Neighborhood Association Developers.** The Declarant shall not be considered the developer of any Neighborhood Association or of any development or building constructed within the Elk Mountain Project unless the Declarant explicitly assumes such duties.

#### **ARTICLE 17: INTERPRETATION, CONSTRUCTION, & APPLICATION**

**17.1 No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.

**17.2 Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, the Bylaws, and then the Rules.

**17.3 Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this



Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

**17.4 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.

**17.5 Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.

**17.6 Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.

**17.7 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a mixed-use community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Declarant, the Association, any Owner, or any other Person subject to their terms.

**17.8 Applicable Law.** The Association is specifically made subject to the Act and Utah law. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

**17.9 Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

**17.10 Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Association shall have no liability whatsoever

if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

#### **ARTICLE 18: GENERAL PROVISIONS**

**18.1 Enforcement.** The Declarant, the Association, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. 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 attorney fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

**18.2 Attorney Fees.** If the Association utilizes legal counsel to enforce any Term and Condition, or after an Owner communicates or demonstrates an intent not to comply with a Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

**18.3 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 email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.

Unless an Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Board, or the Association's Manager, an email address that the Association may use to affect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if

there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

**18.4 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 the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.

**18.5 Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

**18.6 Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

**18.7 Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

**18.8 Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the

general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's Allocated Interest shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

**18.9 Dissolution.** The Association may be dissolved by the affirmative assent in writing Owners holding at least ninety percent (90%) of the Allocated Interest of the Association. 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, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in this Declaration.

**18.10 Security.** The Declarant and the Association shall in no way be considered an insurer or guarantor of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage to Owners or their personal property for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. By purchasing a Lot in the Project and/or residing in the Project, Owners and Occupants agree that the Association and the Declarant are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property, to the extent any such damages are not covered by insurance. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE DECLARANT HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

**18.11 Fair Housing 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 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, the Common Area and Facilities, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

**18.12 Effective Date.** This Declaration and any amendment hereto, shall take effect upon its filing in the office of the Cache County Recorder.

En 1209928 Bk 2051 Pg 1739

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year written below.

DATED as of the 7 day of December, 2018.

**DECLARANT**  
**KARTCHNER LAND MANAGEMENT, INC.**  
a Utah corporation

By: 

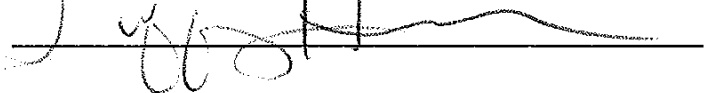
Name: Troy A. Kartchner

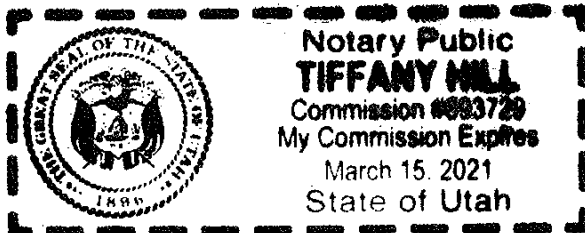
STATE OF UTAH                    )  
                                              ) ss.

Its: President

COUNTY OF Caine )

On the 7, day of December, 2018, personally appeared before me Troy A. Kartchner, who by me being duly sworn, did say that she/he is an authorized representative of Kartchner Land Management, Inc., and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public 



Ent 1209928 Bk 2051 Pg 1740

EXHIBIT "A"  
LEGAL DESCRIPTION

ALL CURRENT AND FUTURE LOTS AND PHASES OF ELK MOUNTAIN PUD

ALL CURRENT LOTS AND PHASES AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 126 THROUGH 175 (INCLUSIVE), ELK MOUNTAIN PHASE 1-A, ACCORDING TO THE OFFICIAL PLAT THEREOF FILED MAY 22, 2008 AS ENTRY NO. 972302, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY UTAH.

LOTS 101 THROUGH 104 (INCLUSIVE), AND LOTS 124-A, 124-B, 125-A, 125-B, 126-A, 126-B, 127-A, 127-B, 128-A, 128-B, 129-A, 129-B (INCLUSIVE), ELK MOUNTAIN PHASE 1 PLAT 1-B-1, ACCORDING TO THE AMENDED PLAT FILED DECEMBER 8, 2010 AS ENTRY NO. 1034617, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY, UTAH.

LOTS 306-311 (INCLUSIVE), ELK MOUNTAIN PHASE 3, ACCORDING TO THE OFFICIAL PLAT THEREOF FILED JUNE 14, 2018 AS ENTRY NO. 1197671, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY UTAH.

LOTS 11-41 (INCLUSIVE), ELK MOUNTAIN PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF FILED SEPTEMBER 22, 2017 AS ENTRY NO. 1180649, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY, UTAH.

LOTS 42-61 (INCLUSIVE), ELK MOUNTAIN PHASE 5, ACCORDING TO THE OFFICIAL PLAT THERE FILED SEPTEMBER 22, 2017 AS ENTRY NO. 1180650, IN THE OFFICE OF THE RECORDER OF CACHE COUNTY, UTAH.



**EXHIBIT B**  
**BYLAWS**  
**OF**  
**ELK MOUNTAIN HOME OWNERS ASSOCIATION**

These BYLAWS OF ELK MOUNTAIN HOME OWNERS ASSOCIATION are effective upon recording in the Cache 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**

A. 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.

B. 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 master planned development Project known as Elk Mountain and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I**  
**DEFINITIONS**

1.1 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 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Mountain.

**ARTICLE II**  
**APPLICATION**

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, 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 Dwellings or the mere act of occupancy or use of any said Dwellings 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**

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to

transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board 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. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Control Period, but the Declarant may hold Annual Meetings at its discretion.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the Allocated 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 a valid Owner request. During the Control Period, Special Meetings may only be called by the Declarant.

3.3 **Place of Meetings.** The Board may designate any place in Utah that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and location (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. 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 ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address 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 Dwelling shall be deemed to be the Owner's registered address and notice to the Dwelling address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

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 Assessment account (together with interest or other fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) 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 Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum**. Those Owners present in person or by proxy at any duly called meeting that is called and held in compliance with the requirements of this Article, shall constitute a quorum for the adoption of decisions.

3.8 **Proxies**. At each Owner meeting, 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 signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney 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 shall record all proxies in the meeting minutes.

3.9 **Votes**. With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, a vote equivalent to the Allocated Interest of each Lot of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, or the Acts. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 **Election Districts**. In order to promote representation from all areas within the Project, the Declarant and/or the Association may establish Election Districts for the purpose of electing Board Members. Each Election District may consist of one or more Neighborhoods and/or one or more Lots that are not part of a designated Neighborhood. Each Election District may elect the number of Board member positions as assigned to the Election District in the Declaration or Supplement thereto. Each Election District shall have the right to elect at least one Board member and the total number of Election Districts within the Project shall not exceed the total number of Board members to be elected pursuant to these Bylaws.

3.11 **Establishment of Election Districts**. Declarant hereby establishes three (3) Election Districts for the purposes of Board Member elections as follows:

- (1) Election District 1 shall include all twin home Lots and the Owners of such Lots shall be entitled to elect one (1) Board Member.
- (2) Election District 2 shall include all Lots with detached single-family homes and such Lots shall be entitled to elect two (2) Board Members.
- (3) Election District 3 shall include all townhome Lots and such Lots shall be entitled to elect two (2) Board Members.

The Declarant, acting alone, may amend and change such Election District designations at any time prior to the expiration of the Control Period. After the expiration of the Control Period, the Board shall have the right to record or amend any such Supplement designating the Election Districts upon the vote of a majority of the Board members and upon approval of a majority of the Allocated Interest of all Owners within the Association. Any such Supplement or amendment thereto shall become effective upon recording.

**3.12 Election District Voting.** The Association shall conduct Election District voting for each open Board Member position at the Annual Meeting. If the Association is unable to hold Board Member elections at the Annual Meeting, then a Special Meeting shall be held in accordance with these Bylaws whereby the Members within each Election District shall vote on Board Member candidates for election to the Master Association Board. Each Member's vote in the Election District voting shall be equal to their Allocated Interest. Board Members will be elected by a simple majority vote of the Owners from the Election District present at the meeting. If two (2) candidates have equal votes, then the issue shall be resolved by a coin toss. All Board Member elections shall be subject to any and all appointment powers granted to the Declarant in the Declaration.

**3.13 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 or of the Owners shall be deemed waived if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

**3.14 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 Utah Code §16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

**3.15 Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

## **ARTICLE IV BOARD OF DIRECTORS**

4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board 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 five (5) persons. Board Members shall be composed of those Persons elected through the Election District process described in Sections 3.11 and 3.12 hereto. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Control Period, the Board Member qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Control Period, Board Members shall be appointed by Declarant. Following the Control Period, the election of Board Members shall be made by the Owners of each Election District. 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 Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members shall be by secret ballot. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Control Period, Board Member terms shall be determined exclusively by Declarant. Following the Control Period, the terms of the Board Members shall be two (2) years. The terms of Board Members shall be staggered and overlap so that elections for Board Member positions are held each year. Board Members may serve consecutive terms if elected. At the first election following the Control Period, the Person elected from the twin home Election District and the Persons receiving the highest number of votes from the single-family and townhome Election Districts respectively shall serve two (2) year terms, the other Persons elected from the single-family and townhome Election Districts shall serve one (1) year terms.

4.5 **Regular Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Control Period, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 **Meeting Notice.** Meeting Notice shall be delivered personally, by email, by text, or by telephone to all Board members and any Lot Owners who have requested notice

at least two days in advance of the meeting. Any Board Member may waive notice of a meeting. By unanimous consent of the Board, special meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific time period during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

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

4.10 **Open Meetings.** Except as provided in (a) through (f) below, following the Control Period, 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 to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative 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 Control Period, 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. Notwithstanding the foregoing, the Board meetings required under Utah Code § 57-8a-226(6)(b) shall be open to all Owners.

4.11 **Board Meetings Generally.** The Board may designate any place in Cache County as the meeting place for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Control Period, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 **Board Action.** Notwithstanding noncompliance with any provision within these Bylaws, 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 these Bylaws may not



bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

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

4.14 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Board Members appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Control Period 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 Allocated Interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

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

4.16 **Action Without a Meeting.** Board Members 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 Utah Code §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.

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

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

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members 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, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall have the rights and powers set forth in this Article, or as otherwise designated by the Board. Officers shall not be required during the Control Period.

5.2 **Election, Tenure, and Qualifications.** Officers shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, 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 may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may determine.

5.4 **Resignation and Removal.** Officers may resign at any time by delivering a written resignation to any member of the Board 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 Members at any time, with or without cause.

5.5 **Vacancies.** If a vacancy occurs 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 at any regular or special Board meeting.

5.6 **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 **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 or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 **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 may require. 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 **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, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

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.

## **ARTICLE VI COMMITTEES**

6.1 **Designation of Committees.** The Board may designate committees as it deems 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 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 committee shall keep a record of its proceedings and shall regularly report such records to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer 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 shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to a Board Member, 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 a committee member.

6.5 **Vacancies.** If a vacancy occurs in a committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the 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 Board Member, 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 Board Member, 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 Board Member, 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 Board Member, 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 Board Member, 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 Board Members, 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 Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, 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 Board Member, 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, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise 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.

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, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## **ARTICLE VIII RULES AND REGULATIONS**

8.1 **Rules.** The Board shall have the authority to adopt Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, 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 lessees, invitees, 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. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

## **ARTICLE IX AMENDMENTS**

9.1 **Amendments by Declarant.** So long as the Declarant owns one or more Lots in the Project or any Additional Land, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarant's unilateral amendment right as designated herein may continue past the expiration of the Control Period. No other amendment shall be valid or enforceable during the period Declarant owns at least one Lot or any Additional Land unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Lot or any Additional Land shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Cache County Recorder.

9.2 **Amendments by Association.** After the Declarant has annexed all Additional Land and has sold all of the Lots to third parties, the Bylaws may be amended by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the Allocated Interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote 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 vote 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 Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any Declarant rights without the express written consent of the 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 a 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 has executed and adopted these Bylaws on behalf of the Association.

DATED this 7 day of December, 2018.

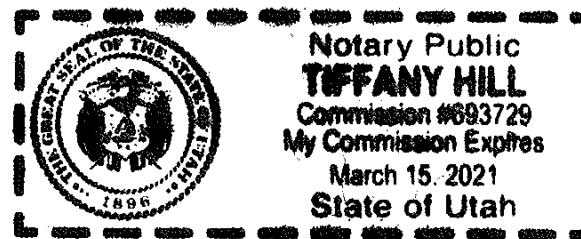
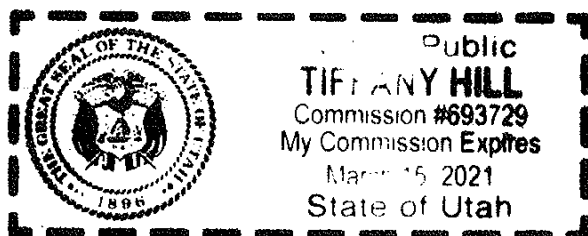
**DECLARANT**  
**KARTCHNER LAND MANAGEMENT, INC.**  
a Utah corporation

By: [Signature]  
Its: president

State of Utah )  
County of Cache ) ss.

On the 7 day of December, 2018, personally appeared before me Troy A. Kartchner who by me being duly sworn, did say that she/he is an authorized representative of Kartchner Land Management, Inc., and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature]



Ent 1209928 Rk 2051 Pg 1753