

After recordation, return to:  
Georgetown Development, Inc.  
2230 No. University Parkway Ste 7G  
Provo, UT 84604

ENT137146:2019 PG 1 of 43  
**Jeffery Smith**  
**Utah County Recorder**  
2019 Dec 23 04:26 PM FEE 68.00 BY MA  
RECORDED FOR Access Title Company  
ELECTRONICALLY RECORDED

**DECLARATION OF PROTECTIVE EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS**  
(Including Owner Association Bylaws)

**OLDE IVY**

**A Planned Unit Development**

**Provo City, Utah County, Utah**

**THIS DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made this 23<sup>rd</sup> day of DECEMBER, 2019, by **GEORGETOWN DEVELOPMENT, INC.**, a Utah corporation ("Declarant"), in its capacity as the owner and developer of **Olde Ivy**, a residential planned unit development consisting of townhomes in Provo City, Utah County, Utah (the "Development").

## TABLE OF CONTENTS

ARTICLE I	PURPOSE AND EFFECTUATION
1.01	Purpose
1.02	Effectiveness
ARTICLE II	DEFINITIONS
ARTICLE III	PROPERTY DESCRIPTION
3.01	Submission
3.02	Division into Lots
ARTICLE IV	MAINTENANCE
4.01	Maintenance by Owners
4.02	Maintenance by Association
4.03	Planting Areas; Snow Removal
4.04	Clarification of Maintenance Responsibilities
4.05	Owner Maintenance Neglect
4.06	Maintenance Caused by Owner Negligence
ARTICLE V	PROPERTY RIGHTS; CONVEYANCES AND EASEMENTS
5.01	Landscape Maintenance Easement
5.02	Easement Concerning Common Areas
5.03	Form of Conveyancing
5.04	Title to and Taxation of Common Areas
5.05	Limitation on Common Areas Easement
5.06	Utility Easements
5.07	Easements for Encroachments
5.08	Limited Common Area Easements
5.09	Party Wall and Shared Roof Easement
5.10	Drainage Easement
ARTICLE VI	USE RESTRICTIONS
6.01	Use of Common Areas
6.02	Residential Use
6.03	Prohibited Use and Nuisances
ARTICLE VII	DESIGN REVIEW
7.01	Design Guidelines
7.02	Design Review Committee
7.03	Submission to DRC
7.04	Standard
7.05	Approval Procedure
7.06	Construction
7.07	Liability for Damages
ARTICLE VIII	INSURANCE
8.01	Hazard Insurance
8.02	Liability Insurance

- 8.03 Lot Owner Insurance Responsibility
- 8.04 Additional Insurance; Further General Requirements
- 8.05 Fidelity Coverage
- 8.06 Review of Insurance
- 8.07 Unit Owners Policies
- 8.08 Other Insurance Provisions
- 8.09 Directors and Officers Insurance

ARTICLE IX RIGHTS OF MORTGAGEES

- 9.01 Title and Mortgagee Protection
- 9.02 Preservation of Common Area
- 9.03 Notice of Matters Affecting Security
- 9.04 Notice of Meetings
- 9.05 Right to Examine Association Records
- 9.06 Right to Pay Taxes and Charges
- 9.07 No Priority Accorded
- 9.08 Construction

ARTICLE X PARTY WALLS

- 10.01 General Rules of Law to Apply
- 10.02 Sharing of Repair and Maintenance
- 10.03 Destruction by Fire or Other Casualty
- 10.04 Weatherproofing Repairs
- 10.05 Right to Contribution Runs with Land

ARTICLE XI BYLAWS – MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

- 11.01 Membership
- 11.02 Voting Rights
- 11.03 Multiple Ownership Interests
- 11.04 Records of Ownership
- 11.05 Place of Meeting
- 11.06 Annual Meetings
- 11.07 Special Meetings
- 11.08 Notice of Meetings
- 11.09 Quorum
- 11.10 Adjourned Meetings
- 11.11 Qualified Voters
- 11.12 Record Date for Notice Purposes
- 11.13 Proxies
- 11.14 Waiver of Irregularities
- 11.15 Action Taken Without a Meeting
- 11.16 Minutes of Owner Meetings
- 11.17 Officers
- 11.18 Initial Composition of Board
- 11.19 Board of Directors: Owner Control; Composition, Election
- 11.20 Indemnification of Board
- 11.21 Regular Board Meetings
- 11.22 Special Board Meetings
- 11.23 Board Meeting Notice
- 11.24 Quorum and Manner of Action

- 11.25 Owner Attendance
  - 11.26 Open Meetings
  - 11.27 Board Meetings Generally
  - 11.28 Board Action
  - 11.29 Compensation
  - 11.30 Resignation and Removal
  - 11.31 Vacancies
  - 11.32 Action Without a Meeting
  - 11.33 Waiver of Notice
  - 11.34 Adjournment
  - 11.35 Meeting
  - 11.36 Waiver
  - 11.37 Conflicts
- 

#### ARTICLE XII DUTIES AND POWERS OF THE ASSOCIATION

- 12.01 Duties of the Association
- 12.02 Powers and Authority of the Association
- 12.03 Association Rules and Regulations
- 12.04 Managing Agent
- 12.05 Limitation of Liability

#### ARTICLE XIII ASSESSMENTS

- 13.01 Personal Obligation and Lien
- 13.02 Purpose of Assessments
- 13.03 Annual Assessments
- 13.04 Annual Budget
- 13.05 Notice and Payment of Annual Assessments
- 13.06 Initial and Transfer Fees
- 13.07 Special Assessments
- 13.08 Uniform Rate of Assessment
- 13.09 Declarant's Exemption From Assessments
- 13.10 Quorum Requirements
- 13.11 Specific Assessment
- 13.12 Certificate Regarding Payment
- 13.13 Effect of Nonpayment; Remedies
- 13.14 Subordination of Lien to Mortgages
- 13.15 No Abatement
- 13.16 Other Collection Actions
- 13.17 Application of Excess Assessments
- 13.18 No Offsets
- 13.19 Homestead Waiver

#### ARTICLE XIV GENERAL PROVISIONS

- 14.01 Notices
- 14.02 Amendment
- 14.03 Action without Meeting; Action by Written Ballot
- 14.04 Environmental Issues
- 14.05 Changes in Price, Size, Design or View Impairment
- 14.06 Declarant's Rights Assignable
- 14.07 Interpretation

- 14.08 Condemnation
- 14.09 Covenants to Run with Land
- 14.10 Enforcement of Restrictions
- 14.11 Duration/Termination
- 14.12 Right to Enter Lots and Units
- 14.13 Fair Housing Accommodations
- 14.14 Attorney Fees
- 14.15 Effective Date

ARTICLE XV SPECIAL DECLARANT RIGHTS

- 15.01 Improvements
- 15.02 Expandable Project
- 15.03 Special Declarant Rights
- 15.04 Exercising Special Declarant Rights
- 15.05 Interference with Special Declarant Rights
- 15.06 Limitation on Improvements by Association
- 15.07 Transfer of Special Declarant Rights
- 15.08 Voting
- 15.09 Easements Reserved to Declarant

ARTICLE XVI DISPUTE RESOLUTION

- 16.01 Alternative Dispute Resolution Without Litigation
- 16.02 Dispute Resolution Procedures
- 16.03 Initiation of Litigation by Association
- 16.04 Informed Vote
- 16.05 Strict Compliance Required
- 16.06 Owner Warranties
- 16.07 No Action
- 16.08 Agreement
- 16.09 No Amendment

Schedule of Exhibits

Exhibit A – Phase 1

## ARTICLE I PURPOSE AND EFFECTUATION

1.01 **Purpose.** The purpose of this Declaration is to provide for the preservation of the values of Lots, Units and Common Areas within the Development; and for the maintenance of any undedicated roadways, easements, driveways, sidewalks, parking areas, recreation and community amenities, open space, landscaping, trees and all other Common Areas therein.

1.02 **Effectiveness.** From and after the effective date hereof: (a) each part of the Development, and each Lot and Unit lying within the boundaries of the Development, shall comprise constituent parts of a single expandable planned-unit development; (b) the Development shall consist of the Lots and Units constructed therein, and the Common Areas as described and depicted on any Plat; (c) the Declaration for the Development shall consist of this document following the recordation thereof in the Public Records, as the same may thereafter be supplemented or amended in accordance with the provisions thereof; and (d) the Plat or Plats of the Development shall consist of the instruments identified as **Olde Ivy Phase 1, Planned Unit Development**, Provo City, Utah County, state of Utah, and recorded in the Public Records as the same may hereafter be amended; and any similar Plat recorded in the Public Records pursuant to the provisions of this Declaration as set forth in Sections 3.03 and 3.04 relating to annexation or expansion of the Development.

1.03 The Development is not a condominium or cooperative project.

## ARTICLE II DEFINITIONS

When used throughout this Declaration, including the title and preamble, the following terms shall have the meanings indicated:

**Articles** shall mean and refer to the Articles of Incorporation of the Association, which are or will be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as said Articles may be amended from time to time.

**Assessment** means any amount levied or assessed by the Association against an Owner or Lot and Unit (whether an Annual, Special or Specific Assessment) as described in a Governing Document.

**Association** shall mean Olde Ivy Townhomes Owners Association, a Utah nonprofit corporation, and any successor incorporated or unincorporated association of the Lot Owners acting under the authority of this Declaration, the Bylaws and the Act. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

**Board** shall mean the Board of Directors of the Association.

**Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLE XI.

**City** shall mean and refer to Provo City, Utah County, Utah, the municipality in which the Development is located and by which it has been permitted.

**Common Area(s)** shall mean all portions of the Development, except the Lots, Units and garages, and shall include all property, outside of the Lots, maintained and administered by the Association for the common use and enjoyment of the Owners, such as any private undedicated roadways, walkways, easements, driveways, parking areas, open spaces, landscaping, storm drains, and the like, utility lines serving more than one Unit, or any real property or improvements within the Development that the Association has the obligation to maintain, repair, or replace, together with all easements appurtenant thereto, whether or not reflected on the Plat, as the Board shall determine in its sole and exclusive discretion.

**Common Expenses** shall mean and refer to those sums expended by the Association in carrying out its duties and responsibilities of maintenance, operation and management of the Property and the Association, including, but not limited to: insurance premiums on coverages required to be obtained and maintained by the Association; maintenance and landscaping (including snow removal), repairs and improvements upon Common Area; utilities and similar fees for which the Association may be responsible (electricity, water, gas, garbage, storm water discharge fees, etc.); and establishment and funding of any reserve accounts to cover major repairs to or replacements of Common Area.

**DRC** means the Design Review Committee established and referred to in ARTICLE VII of the Declaration.

**Declarant** shall mean **Georgetown Development, Inc.**, a Utah corporation, its successors and assigns, if any, as owner and developer of the Development.

**Declaration** shall mean this **Declaration of Protective Easements, Covenants, Conditions and Restrictions (Including Owner Association Bylaws)** pertaining to the Development, recorded in the Public Records, as the same may be amended from time to time.

**Development** means the residential planned unit development known as **Olde Ivy**, to which this Declaration applies, located in the City, as it exists at any given time.

**Governing Documents** shall mean collectively, the Declaration, Articles, Bylaws, Plat and any Rules and Regulations adopted by the Board.

**Limited Common Area** shall mean any Common Area designated herein or on the Plat for the exclusive use of the Owner or Owners of a particular Lot or Lots, whether or not designated as such on the Plat. Limited Common Areas identified on the Plat as immediately adjacent to a Lot shall be Limited Common Area for the exclusive use of the Owner or Owners of such Lot. Whether or not indicated on the Plat, the Limited Common Areas shall include facilities appurtenant to the Units including porches, balconies and driveways. The Board shall have the power and discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

**Lot** means any of the separately numbered and individually described parcels of land within the Development, as designated on a Plat. Lot numbers are synonymous with Unit numbers, (notwithstanding the assignment of a separate residential address to each Lot/Unit by the City, whether or not reflected on a Plat).

**Managing Agent** shall mean any person or entity appointed or engaged by the Association as Managing Agent of the Development as provided in Section 12.04 of the Declaration.

**Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean any mortgagee or beneficiary named in a Mortgage.

**Owner** means any person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot/Unit, and any contract purchaser of any Lot/Unit. No Mortgagee, nor any trustee or beneficiary of a deed of trust or trust deed, shall be an Owner unless such party acquires fee title to a Lot/Unit pursuant to foreclosure or sale, or conveyance in lieu thereof. Declarant shall be an Owner with respect to each platted Lot owned by it. Multiple Owners of a particular Lot/Unit shall be jointly and severally liable as to all responsibilities and obligations of an Owner.

**Period of Declarant Control** means the period of time during which the Declarant may act as the Board of Directors, or appoint Directors. 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 have been conveyed to Persons other than 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.

**Plat or Plats** mean any of the subdivision plats of the Development as approved by the City and recorded in the Public Records.

**Public Records** shall mean the office of the Utah County Recorder.

**Property** shall mean all real property to which the Declaration applies, including that described in Section 3.01 of the Declaration and in **EXHIBIT A**.

**Rules or Rules and Regulations** mean the Rules and Regulations and Design Requirements adopted from time to time by the Board pursuant to Article VII and Section 12.03 of the Declaration.

**Unit** means a structure which is designed, constructed and intended for use and occupancy as a single-family residence on a Lot. A Unit includes a garage on a Lot. A Unit includes, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, foundations, exterior and interior doors, door jams, windows, window sills, window frames and garage doors. A Unit also includes any mechanical equipment and appurtenances located within the Unit, or located without the Unit but designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. Units share a party wall with adjoining attached Units along their common Lot lines. Lot numbers and Unit numbers are synonymous.

### ARTICLE III

#### PROPERTY DESCRIPTION

3.01 **Submission.** The Property which shall be held, transferred, sold, conveyed, and occupied, subject to the provisions of the Declaration, consists of the real property in the City, as set forth and described in **EXHIBIT A**, attached hereto and made a part hereof:



**TOGETHER WITH** all easements, rights-of-way, and other appurtenances and rights or obligations incident to, appurtenant to, or accompanying the above-described Property, whether or not the same are reflected on the Plat.

**RESERVING UNTO DECLARANT**, however, such easements and rights or obligations of ingress and egress over, across, through and under the said Property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the Units and all of the other improvements described in this Declaration or on a Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete any portion thereof such improvements as Declarant shall determine to build in its sole discretion and (iii) to improve portions of the Property with such other or additional improvements, facilities, landscaping and television, or other communication systems designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the Property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 15 years after the date on which this Declaration is recorded in the Public Records.

**THE FOREGOING IS SUBJECT TO:** (i) all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; (ii) all patent reservations and exclusions; (iii) all mineral reservations of record and rights incident thereto; (iv) all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); (v) all visible easements and rights-of-way; (vi) all easements and rights-of-way, encroachments, or discrepancies shown on, or revealed by, a Plat or otherwise existing; (vii) an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the Property at such time as construction of all Development improvements is complete; (viii) all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; and (ix) **TO EACH OF THE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

3.02 **Division into Lots.** The Development is divided into numerically numbered Lots, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to Assessments, maintenance, and similar matters, as set forth herein. It is contemplated that the Development will ultimately consist of a total of 24 Lots. Declarant makes no assurances or representations in that regard, however.

## ARTICLE IV MAINTENANCE

4.01 **Maintenance by Owners.** Except to the extent that the Association is responsible for such maintenance under Section 4.02 and 4.03, maintenance of the Lots and the Units shall be the responsibility of the Owners thereof, who shall maintain such Lots and Units in good condition and

repair. Each Owner at his or her sole expense shall maintain, repair and replace the interior of the Unit, including each and every structural element, foundations, party walls, exterior windows, window frames, garage doors, exterior doors and door frames, and exterior light fixtures. Within a Unit, any pipe, conduit, or other utility device or apparatus shall be the responsibility of that Lot's Owner to maintain, repair, and replace.

Each Owner shall be responsible for maintenance, repair and replacement of the landscaping (including grass, flower or planting beds, irrigation lines and fixtures, shrubs and trees) of any portion of a Lot or Limited Common Area which is enclosed by a fence for the benefit and use of the Owner's Unit, including the fence itself. Each Owner is responsible to maintain, repair and replace the Limited Common Area appurtenant to the Owner's Lot, except as otherwise stated herein, including decks, balconies, porches, driveways, and sidewalks. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot. In the event of the damage or destruction of any Unit, the Owner of the Lot upon which such Unit is situated shall rebuild that part of the Unit for which the Owner is responsible to maintain, repair and replace within a reasonable time.

**4.02 Maintenance by Association.** The Association shall provide for, as a Common Expense, the care, maintenance, repair and replacement of the Common Areas and all exterior surfaces of the Unit structures, including siding and the siding system and components, and the roofs, soffits, fascia, gutters, and downspouts on such structures (but not including glass surfaces or the maintenance, repair, or replacement of glass, doors, door frames, windows, window frames and also not including sealing, repairing or otherwise fixing foundations), as well as shared utility lines and walkways on Lots, excluding improvements on and to the Limited Common Areas. The Association shall maintain the landscaping (including grass, flower or planting beds, irrigation lines and fixtures, shrubs and trees) upon and within the Common Area (except Limited Common Area enclosed by a fence) and within the Landscape Maintenance Easement described in Section 5.01.

**4.03 Planting Areas; Snow Removal.** Each Owner may plant and maintain flower beds in planting areas located adjacent to such Owner's Unit that are designated by the Board. However, existing plants may not be removed without written permission from the Association, except in an area enclosed by a fence. Removal of plants without written permission from the Association may result in an Assessment against the Owner's Unit for costs associated with the replacement of plantings. The Association shall undertake the periodic removal of accumulated snow and ice from all sidewalks, driveways and drive aprons in front of Units. Notwithstanding the foregoing, an Owner of a Unit shall be responsible to ensure that accumulated snow and ice from all sidewalks, driveways and drive aprons in front of such Owner's Unit do not constitute a safety hazard.

**4.04 Clarification of Maintenance Responsibilities.** To the extent not clarified in the Declaration and not inconsistent with the provisions of the Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities, or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners.

**4.05 Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot, Unit, or improvement, or for the purpose of removing or correcting any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of the Governing Documents. The Board shall have the sole authority and discretion to decide whether

an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be a Specific Assessment against the Owner's Lot.

**4.06 Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas, Limited Common Areas or a Lot is caused through the willful or negligent acts of an Owner, an occupant, or the family, guests, 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 a Specific Assessment against such Lot.

## ARTICLE V

### PROPERTY RIGHTS; CONVEYANCES AND EASEMENTS

**5.01 Landscape Maintenance Easement.** Each Owner, by acquiring or in any way becoming vested with an Owner's interest in a Lot, irrevocably grants to the Association an easement to those portions of the Lot that may be exterior to the actual foundations of the Unit on the Lot; provided that such easement shall not apply to any portion of such Lot enclosed by a patio fence, if any, which attaches to the residence, in which case the easement shall apply to portions of the Lot exterior to such fence. The purpose of such easement is to provide for uniform landscape maintenance of Common Areas by the Association. The easement area is deemed to be Common Area for such purposes only but not for purposes of ownership, title or payment of taxes.

**5.02 Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes; subject, however to the provisions of Section 5.05, below. Such right and easement shall be appurtenant to, and shall pass with title to, each Lot and shall in no event be separated therefrom.

**5.03 Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot \_\_\_\_, Phase \_\_\_\_, **Olde Ivy, A Planned Unit Development, Provo City, Utah County, Utah; SUBJECT TO the Declaration of Protective Easements, Covenants, Conditions and Restrictions of Olde Ivy, A Planned Unit Development** (the "Declaration"), recorded in the Office of the Utah County Recorder (as the same may have heretofore been amended or supplemented), **TOGETHER WITH** an undivided equal ownership interest in and to the Common Areas described in said Declaration (as the same may have heretofore been amended).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

**5.04 Title to and Taxation of Common Areas.** Consistent with the provisions of Section 10-9a-606 of the *Utah Municipal Code*, title to the Development's Common Area real property shall not be separately owned or conveyed independent of the Lots created by the Plat containing such Common Area. For purposes of tax assessment, ownership of such property shall be divided equally among the Lots/Units.

**5.05 Limitation on Common Area Easement.** Each Lot's appurtenant right and easement of use and enjoyment of the Common Areas shall be subject to the following:

(a) The right of the Association, as provided in Section 12.03, to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment thereof in a manner consistent with the collective rights of all of the Owners; and

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any private street or driveway, parking area, walkway, easement, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service.

**5.06 Utility Easements.** Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through the property and such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot/Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result. All utility lines beyond the main line are private systems and not the responsibility of Provo City. The association will indemnify and hold harmless Provo City from any claims arising out of the existence or maintenance of such lines.

**5.07 Easements for Encroachments.** If any structure or Unit improvement (including without limitation, roof or deck overhangs) constructed on any Lot, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof or deck overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor, shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**5.08 Limited Common Area Easements.** Any Limited Common Area within the Development is deemed to constitute a perpetual easement appurtenant to the Lot or Lots to which it is attached and to which it appertains.

**5.09 Party Wall and Shared Roof Easement.** Each Owner 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.

5.10 **Drainage Easement.** A drainage easement exists on, over and across Common Areas and any surface of Limited Common Areas within the Development to accommodate the natural drainage flow of runoff water into natural or prepared catch basins or storm drains.

## ARTICLE VI USE RESTRICTIONS

6.01 **Use of Common Areas.** The Common Areas shall be used only in a manner: (i) consistent with their community nature; (ii) consistent with the use restrictions applicable to Lots and Units set forth herein; (iii) as set forth in any Rules and Regulations adopted by the Board pursuant to Section 12.03; and (iv) as may be required for purposes deemed necessary by the City. There shall be no obstructions of Common Areas by the Owners, their tenants, guest or invitees. The Rules and Regulations may prohibit or limit the use of Common Areas as may be reasonably necessary to protect the interest of the Owners, the Units, or Common Areas. ~~Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as may be specifically provided herein.~~

6.02 **Residential Use.** That portion of the Property which contains Units is zoned for, and is restricted to, single family residential use and occupancy. No Lot or Unit shall be used, occupied, or altered in violation of such ordinance so as to create a nuisance, or to interfere with the rights of any other Owner. For purposes of this Declaration a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful use of their property. The Board shall have the sole and absolute discretion and authority to determine if an activity or condition constitutes a nuisance.

### 6.03 **Prohibited Use and Nuisances.**

(a) No exterior structural, mechanical or electrical systems modifications shall be made to any Unit without prior approval by the DRC as set forth in ARTICLE VII herein.

(b) No lease of any Unit shall be for less than the whole Unit, and all leases shall be for an initial term of no less than six months.

(c) No animals of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, and subject to any applicable leash laws;

(d) No parking of vehicles of any kind is permitted on either the private or public roads within the Development. Parking in designated guest parking within the Development is subject to the Rules and Regulations. Rules and Regulations governing parking may expand or alter the provisions of this Section, subject to any parking requirements imposed by the City.

(e) The total number of motor vehicles owned, leased, or otherwise possessed by Owners, tenants and other occupants of Units in the Development which may be parked on or operated from the Development is limited to not more than the number of legal parking spaces, excluding handicap and visitor parking spaces, existing on the Property within the Development as the Development exists at any given time.

(f) Occupants of Units having a two-car garage shall, upon the expiration of one month following move-in, utilize such garage for the overnight parking of vehicles **and not for the storage of personal property to the exclusion of such vehicles.**

(g) Visitor and handicap parking spaces within the Development shall be properly identified as such with appropriate signage approved by the City, and shall be continuously available for visitor parking only, **and not for Owner parking.** Visitor parking shall be subject to current City parking requirements.

(h) The following may not be parked upon the Property between 12:00 a.m. and 5:00 a.m., except within a garage: vehicles (1) containing visible commercial materials or cargo, (2) with tools or equipment mounted on the exterior of the vehicle, or (3) displaying the following exceeding two square feet per side: commercial advertising, logos or business names. No vehicle may be repaired, disassembled, or reassembled on any Common area, garage apron, public street, or designated guest parking on the Development.

(i) No boats, trailers, truck campers, motor homes, RVs, and like vehicles may be stored on the Property.

(j) Strict adherence to the parking provisions set forth in this Section 6.03 is required and the Rules and Regulations may provide penalties for noncompliance.

(k) All outside television or radio aerials or antennas, satellite dishes or other similar devices, except satellite dishes, such as Direct Broadcast Satellite (DBS) dishes one meter in diameter or less, designed to receive direct broadcast satellite service or receive or transmit fixed wireless signals via satellite, are prohibited. Such allowed dishes may be installed, provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association at least three business days before installing any dish. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the dish. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner. The Owner is responsible for, and shall indemnify and hold the Association harmless from, all damage caused by or connected with a dish servicing the Owner's Unit, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such dish, and including personal injury and any other property damage. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. The term "dish" shall include antenna in the interpretation of the above policy.

(l) No Unit within the Development shall: (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is electric or fueled by natural gas only; or (ii) contain any swamp cooler or window-mount air conditioner that is visible from the street or parking areas.

(m) The interior of Unit windows shall be covered within 30 days of occupancy with permanent window coverings.

(n) Unit patios and balconies shall not be used as general storage areas or for the hanging or drying of laundry.

(o) **Declarant's Right to Sell Units.** Until Declarant has completed and sold all of the Units within the Development, neither the Association nor the Unit Owners who have purchased Units from the Declarant shall interfere with the completion of the contemplated improvements and the sale of all remaining Units. Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office and models, the showing of the Units, and the display of signs.

(p) The Rules and Regulations may restrict signs in the Development to the extent permitted by law. The Declarant is not subject to any sign restrictions.

## ARTICLE VII DESIGN REVIEW

**7.01 Design Requirements.** All Improvements, including construction thereof, shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design requirements which the Board is hereby empowered to adopt (referred to as "Design Requirements") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Development. All original construction by Declarant shall be and hereby is approved and deemed compliant with any Design Requirements.

**7.02 Design Review Committee.** The Board shall appoint a three-member Design Review Committee (the "DRC"), the purpose and function of which is to ensure that all improvements and landscaping within the Development harmonize with and conform to the Design Requirements. The DRC need not be composed entirely of Owners. If the DRC is not appointed, the Board itself, or certain appointed members thereof, shall perform the duties required of the DRC. During the Period of Declarant Control, the Declarant shall act as the DRC.

**7.03 Submission to DRC.** Except for original construction by Declarant, no Unit, accessory of, or addition to, a Unit or Lot which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit or Lot or any part thereof, except for glass surfaces, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the DRC.

**7.04 Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the DRC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations within the Development conform to and harmonize with the Design Requirements and with existing surroundings and structures. Any residential structure hereafter constructed on any Lot in replacement of a structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and, if the plans and specifications therefore meet such criteria, the DRC must approve the same.

**7.05 Approval Procedure.** Except as provided in Section 7.03, any plans and specifications submitted to the DRC shall be approved or disapproved by it in writing within 30 days after submission.

In the event the DRC fails to take any action within such specified period, it shall be deemed to have approved the material submitted except in those aspects that such material is not in conformity with the provisions of this Declaration, as to which aspects it shall be deemed disapproved.

**7.06 Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the DRC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Area in the vicinity of the activity, provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

**7.07 Liability for Damages.** Neither the Declarant, DRC, nor any member thereof shall be liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by the DRC or such member with respect to any request made pursuant to this ARTICLE VII, provided that the DRC's process for approval or disapproval of any action is reasonable and not grossly negligent.

## ARTICLE VIII

### INSURANCE

**8.01 Hazard Insurance.** The Association shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide, blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all Units, Limited Common Areas appurtenant to a Unit, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to a Unit or to a Limited Common Area appurtenant to a Unit, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Area, **but not the personal property contents of Units**, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners.

**8.02 Liability Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide a policy or policies of public liability insurance to insure the Association, the Board, the Managing Agent and employees of the Association, and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas, or activities conducted thereon, under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the county in which the Development is located, nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The policy shall provide



that it may not be canceled or substantially modified by the insurer unless it gives at least 30 days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**8.03 Lot Owner Insurance Responsibility.** For covered losses to Lots, the Association's policy is primary but the Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(a) If a loss occurs that is covered by the Association's policy and by a Lot Owner's policy, the Association's policy provides primary insurance coverage and the Lot Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(b) If a Lot, or Limited Common Area or facility appurtenant to a Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy. The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of the amount of, and 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.

(c) The Association's policy does not cover the contents of a Lot or Unit or a Lot Owner's personal property. Each Lot Owner is strongly encouraged to obtain insurance coverage for contents of their Lot or Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above.

**8.04 Additional Insurance; Further General Requirements.** The Board shall also procure insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

(a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**8.05 Fidelity Coverage.** The Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, Managing Agents, Directors and employees of the Association and all others, including volunteers, who handle, or are responsible for handling, funds of the Association. In that event, such fidelity coverage shall:

- (a) name the Association as an insured or obligee;
- (b) be written in an amount based upon the best business judgment of the Association and shall not be for less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' monthly allocation of Annual Assessment on all Lots, plus reserve funds;
- (c) contain waivers of any defense based upon the exclusion of volunteers, or persons who serve without compensation, from any definition of "employee" or similar expression; and
- (d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured or obligee.

**8.06 Review of Insurance.** The Board shall review the adequacy of the Association's insurance program (1) periodically, and (2) whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, and, when so requested, shall report in writing the conclusions and any recommendations made on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

**8.07 Unit Owners Policies.** Each Unit Owner shall be responsible to purchase and maintain in force, appropriate hazard, content and liability insurance as such Owner shall determine is appropriate to such Owner's needs and circumstances. **The Association will not be required to file claims on any of its policies for any damage or liability claim that should have been covered under an Owner's policy required by this Section 8.07.**

**8.08 Other Insurance Provisions.** All insurance required pursuant to this ARTICLE VIII shall be written by insurers licensed in the state of Utah. Notwithstanding anything in this ARTICLE VIII to the contrary, any insurance required to be obtained by the Association pursuant to the provisions of this ARTICLE VIII shall be required only to the extent that such coverage is obtainable at reasonable rates and is customarily obtained with respect to improvements and facilities having the same or similar characteristics of the property or risks being insured.

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

Agent and any employees of the Managing Agent and may provide that such coverage is secondary to any other policy that covers the Managing Agent or any employees of the Managing Agent.

## ARTICLE IX RIGHTS OF MORTGAGEES

**9.01 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful).

**9.02 Preservation of Common Area.** Unless the Association shall receive the prior written approval of two-thirds of the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities, ingress and egress, and similar or related purposes.

**9.03 Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

(a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within 60 days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000;  
or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

**9.04 Notice of Meetings.** The Board shall give to any Mortgagee of a Lot requesting the same, notice of meetings of the Association, and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

**9.05 Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

**9.06 Right to Pay Taxes and Charges.** Mortgagees may, but shall have no obligation to pay taxes or other charges which are in default and which may or may not have become a charge against any portion of the Common Areas, and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy. A Mortgagee's payment of any such charges shall entitle the Mortgagee to reimbursement from the Association.

9.07 **No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or, any other party, priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to, or taking of, Lots and/or Common Areas.

9.08 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this ARTICLE IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

## ARTICLE X PARTY WALLS

10.01 **General Rules of Law to Apply.** Each wall to be built as a part of the original construction of any Unit and placed substantially on a dividing line between any two Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this ARTICLE X, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

10.02 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use; provided that the foregoing provision shall not prejudice the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions (including failure to adequately insure).

10.03 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If another Owner thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; provided that the foregoing provision shall not prejudice the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions (including failure to adequately insure).

10.04 **Weatherproofing Repairs.** Notwithstanding any other provision of this ARTICLE X, an Owner who, by his negligent, willful or omissive act, causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. Temporary weatherproofing shall be made permanent within three months from the date of damage or destruction.

10.05 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this ARTICLE X shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ASSOCIATION BYLAWS

**THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLE XI. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS**

**DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.**

## **ARTICLE XI**

### **BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**11.01 Membership.** Every Owner, upon acquiring title to a Lot, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases, for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association is mandatory, appurtenant to, and is not separated from, the ownership of the Lot giving rise thereto.

**11.02 Voting Rights.** Each Owner, including Declarant, shall be entitled to one vote for each Lot in which such Owner holds the interest required for Association membership. 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 Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration.

**11.03 Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the single vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the single vote appurtenant to such Lot be cast with respect to any single issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot unless an objection is made at the meeting or in writing by another owner of the same Lot, in which event no vote will be counted with respect to such Lot, except to determine the presence or absence of a quorum.

**11.04 Records of Ownership.** Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the recorded sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of all Lots. The Secretary of the Association shall maintain all such information in a book entitled "Records of Ownership." The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots.

**11.05 Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Board in the notice thereof.

**11.06 Annual Meetings.** Annual meetings of the membership of the Association shall be held each year beginning in the year 2020 on such month, day and time as is set forth in the notice thereof. At such annual meetings there shall be elected Directors of the Board, as needed, pursuant to the provisions of the Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting.

**11.07 Special Meetings.** The President shall call a special meeting of the Owners: (a) as directed by the Board; or (b) upon a petition signed by Owners holding at least thirty percent (30%) of

the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice thereof.

**11.08 Notice of Meetings.** The Secretary shall deliver a notice of each annual or special meeting or action without a meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than thirty 45, days prior to such meeting. **The mailing of notice by prepaid U.S. Mail, electronic mail, or by delivery in person shall be considered notice served.**

**11.09 Quorum.** Except as provided in Section 13.10, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special.

**11.10 Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" if he or she has fully paid his or her Assessment account (together with any interest and/or late fees) at least 48 hours prior to the commencement of a meeting, or the deadline for return of ballots in an action without meeting, and is not in violation of any provision of the Governing Documents.

**11.11 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 Development shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

**11.12 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 may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. 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.

**11.13 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 by those Members in attendance 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.

**11.14 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 in accordance with the requirements of Utah Code §16-6a-707 or § 16-6a-709 and any other applicable Utah law, all as may be amended. 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.

**11.15 Minutes of Owner Meetings.** The Secretary (or other person as the Secretary may delegate) 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.

**11.16 Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer who need not be from the Board. Only the offices of Secretary and Treasurer may be filled by the same person. Any officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The officers shall be elected by the Board in an organizational meeting of the Board to be held immediately following each annual meeting of Owners at which any member of the new Board has been elected; provided, that until the Board is elected by the Owners, the Association duties may be performed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

**11.18 Initial Composition of Board: Declarant Control.** Declarant alone shall have the right: (a) to select the initial Board of Directors, none of whom need be Owners; or (b) to perform the duties of the Board in place of the Board. Such right of the Declarant to appoint the Board, or to perform its duties, shall remain in Declarant until the termination of the Period of Declarant Control, at which time

the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws.

**11.19 Board of Directors: Owner Control; Composition, Election.** Following the Period of Declarant Control, the Board shall be composed of three Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first annual meeting of Owners to elect a Board of Directors, one shall be elected to a three-year term, one to a two-year term, and one to a one-year term. As Directors' terms expire, new Directors shall be elected for three-year terms and shall serve on the Board until their successors are elected.

**11.20 Indemnification of Board.** Each of the Directors shall be indemnified and held harmless by the Association against all costs, expenses, and liabilities whatsoever (excluding any fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being, or having been, a member of the Board. The right of any person to be defended and/or indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and/or 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.

**11.21 Regular Board Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Period of Declarant Control, 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.

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

**11.23 Board Meeting Notice.** Notice shall be given to Directors and Owners who have requested notice personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Directors, but notice shall always be provided to those Owners who have requested notice of Board meetings.

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

**11.25 Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Director 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 Directors and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Directors. If Owners attend a Board meeting, the Board may select a specific period of time 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.

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



- (a) Consult with legal counsel 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 contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners. Notwithstanding the foregoing, the Board meetings required under Utah Code § 57-8a-226(6)(b) shall be open to all Owners.

**11.27 Board Meetings Generally.** The Board may designate any place in Utah County as the place of meeting 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 Directors to communicate orally in real time. Following the Period of Declarant Control, 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.

**11.28 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 taken the action in dispute.

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

**11.30 Resignation and Removal.** A Director may resign at any time by delivering a written resignation to another Director. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Director it appoints at any time. A Director elected by the Owners may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Director to fill the remaining term of the removed Director. Directors may also be removed by a majority vote of the other active Directors 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 Directors may appoint a replacement to serve the remaining term of the removed Director.

**11.31 Vacancies.** If vacancies occur in the Board during the Period of Declarant Control, the Declarant shall appoint a Director to fill the vacancy. Following the Period of Declarant Control, if

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

**11.32 Action without a Meeting.** Directors have the right to take any action in the absence of a meeting which they could take at a meeting (including by email) if such action is taken in compliance with the provisions of Utah Code §16-6a-813 and any other applicable sections of the Acts, as may be amended. Any action so approved shall have the same effect as though taken at a meeting of the Board.

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

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

**11.35 Meeting.** A Board meeting does not include a gathering of Directors at which the Board does not conduct and vote on Association business.

**11.36 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.

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

## ARTICLE XII

### DUTIES AND POWERS OF THE ASSOCIATION

**12.01 Duties of the Association.** The Association, through its Board of Directors, is responsible for the maintenance of Common Areas; the determination, imposition and collection of Assessments; the enforcement of the provisions of this Declaration and other Governing Documents; and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and to perform the following:

- (a) Accept all Owners as members of the Association;
- (b) Accept title to all Common Area personal property conveyed to it, whether by Declarant or by others, but may refuse if the same is not free and clear of liens and encumbrances;
- (c) Carry out maintenance in accordance with the Declaration;

(d) In connection with its duties to maintain and repair Common Areas, the Association shall provide maintenance and repair upon any private roads, storm drain systems and drives within the Development that are not maintained by a municipality or other party, including any Limited Common Area parking. The Association shall also maintain and repair all Common Area landscaping and plantings

(e) Pay and account for all items of Common Expenses;

(f) Obtain and maintain in force the policies of insurance or bonds required of it by the provisions ARTICLE VIII of the Declaration; and

(g) File or cause to be filed as required U. S. Income Tax Return for Homeowners Associations (IRS Form 1120H).

**12.02 Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles, Bylaws, and other Governing Documents, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration and the Bylaws, as well as the Utah Revised Nonprofit Corporation Act and Utah Community Association Act, as such Acts are amended from time to time. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Governing Documents; or to enforce by mandatory injunction, or otherwise, any of the provisions of the Governing Documents.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and Lots to the extent necessitated by the failure to do so of the Owners of such Lots), or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board, and the Owners;

(iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys, certified public accountants, and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

(vii) The Association may assess fines to Owners, occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Community Association Act. Fines shall be treated as Specific Assessments for collection purposes and shall accrue interest and late fees on delinquent amounts.

(viii) 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 XVI.

**12.03 Association Rules and Regulations.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration and the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) all matters concerning the use and enjoyment of the Common Areas, and the conduct of Owners, their guests and invitees within the Development; (b) the collection and disposal of refuse; and (c) uses and nuisances pertaining to the Development, including the Lots and Units. 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.

**12.04 Managing Agent.** The Association may engage (but is not required to do so) a responsible corporation, partnership, firm, person or other entity, as the Managing Agent to manage, control, and administer the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause, and without payment of any termination fee, upon 30 days' written notice thereof. Any Managing Agent shall be an independent contractor and not an employee.

**12.05 Limitation of Liability.** No member of the Board, acting in good faith, shall be personally liable to the Association, any Owner, guest, tenant or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent. If a Director or any officer of the Association is made a party to any proceeding because the individual is or was a Director or officer of the Association, the Association shall defend, indemnify, and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Director or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

### ARTICLE XIII

#### ASSESSMENTS

**13.01 Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot/Unit, be deemed to covenant with, and agree to pay to the Association the Assessments described in this ARTICLE XIII, as and when levied, together with late payment fees, interest, costs of collection, and fines, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the Assessment is levied, or if the property is held in a trust, the Trustee will be personally liable for all Assessments. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights in the Common Areas, or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee thereof shall be jointly and severally liable with

the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, all of which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

**13.02 Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development and the collective interests of the Owners therein, including, but not limited to, payment of the Common Expenses and any other expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, the Articles, the Bylaws, or the Rules and Regulations.

**13.03 Annual Assessments.** Annual Assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements, as set forth in Section 13.04, to provide for the payment of Common Expenses.

**13.04 Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided, however, the first fiscal year shall begin upon the close of sale of the first Lot/Unit in the Development to the first purchasing Owner. On or before December 1 of each fiscal year thereafter, the Board shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the previous operating period. The budget shall serve as the supporting document for the Annual Assessments for each upcoming fiscal year, and as the major guideline under which the Development shall be operated during such fiscal period. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted.

**13.05 Notice and Payment of Annual Assessments.** Except with respect to the first fiscal year, the Association shall notify each Owner as to the amount of the Annual Assessment against his Lot on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments, with each such installment due and payable on the first day of each calendar month during the fiscal year to which the Annual Assessment relates; provided that the Annual Assessment for the first fiscal period shall be based upon that portion of such fiscal period as follows the close of sale of the first Lot/Unit in the Development to the first purchasing Owner, and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board, may determine. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of, or modification in any respect of, the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment, or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date at least 15 days after notice of such Annual Assessment shall have been given to the Owner in the manner provided in Section 14.01.

**13.06 Reinvestment Fees.** 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 any 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. Unless otherwise set by the Board in the Rules, the Reinvestment Fee shall be equal to three times the then monthly installment of the Annual Assessment. The Reinvestment Fee required by this Section shall be used in accordance with Utah Code § 57-1-46.

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

(b) 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 a Specific Assessment for collection purposes.

(c) 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.

**13.07 Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any Common Expense or other expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to, or replacement of, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Lots in the same manner as Annual Assessments. Such a Special Assessment may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the Special Assessment exceed the votes cast opposing the action, and (2) a quorum of Owners holding at least 50% of the voting rights in the Association cast a vote.

**13.08 Quorum Requirements.** If a quorum is not present at the first meeting or vote under Section 13.07, or any subsequent adjourned meeting or vote, another meeting or vote may be called (subject to the notice requirements in these Bylaws) at which the quorum requirement shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting or vote.

**13.09 Uniform Rate of Assessment.** All Annual and Special Assessments shall be fixed at a uniform rate for all Lots/Units; provided, however, that no Annual or Special Assessments shall be due and payable until a Lot has been both fully improved with a completed Unit and sold to a purchasing Owner (other than Declarant). Specific Assessments shall be allocated separately to each Lot based on the costs incurred by the Association.

**13.10 Declarant's Exemption From Assessments.** The Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. In addition, the Declarant may exempt Lots owned by Declarant affiliates from the payment of Assessments during the Period of Declarant Control, in the Declarant's sole discretion.

**13.11 Specific Assessment.** In addition to Annual and Special Assessments, the Board may levy at any time a Specific Assessment on any Lot/Unit for (a) special benefits provided (i.e., benefited to a substantially greater degree than any other Lot/Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot/Unit to be charged; (b) costs incurred due to an Owner or occupant that causes damage to the Common Areas or other areas of the Development necessitating repairs by the Association; (c) expenses for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration; (d) costs incurred to bring a Lot or Unit in compliance with the Governing Documents; (e) nonpayment of a Reinvestment Fee; and (f) attorney fees, court costs, collection costs, fines, and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action taken, including all overhead and administrative costs, and all attorney's fees and costs, if any, and shall be

allocated among the affected Lots/Unit according to the magnitude of special benefit, or cause of damage, or maintenance, or repair work, or enforcement action, as the case may be. Such Assessment may be also made in advance of the performance of work requested to be furnished by the Association. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots/Units benefited.

**13.12 Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payment of all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**13.13 Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it, or any installment thereof, becomes due shall be subject to a late charge of 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot/Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owners personally liable therefore, or may foreclose its lien against the Lot/Unit judicially or nonjudicially pursuant to provisions of Title 57, Real Estate, of the Utah Code, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure of a mortgage, or in any other manner permitted by law. Any judgment obtained by the Association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section shall not be deemed a waiver of any such rights. The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time. The Declarant hereby conveys and warrants pursuant to Utah Code § 57-1-20 and 57-8a-302 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**13.14 Subordination of Lien to Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any first Mortgage recorded prior to an Association notice of lien; and the holder of any such Mortgage or a purchaser who comes into possession of or becomes the Owner of a Lot/Unit by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot/Unit; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot/Unit in connection with any foreclosure of a Mortgage shall relieve the same from the lien of any Assessment installment, or portion thereof, thereafter becoming due.

**13.15 No Abatement.** No diminution or abatement of any Assessment shall be claimed or allowed for inconvenience, annoyance, or discomfort arising from: (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Areas in the Development; or (c) any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or orders of any applicable governmental authority.

**13.16 Other Collection Actions.** In addition to seeking a judicial or nonjudicial foreclosure action, the Association may exercise any or all of the following remedies to collect delinquent Assessments:

- (a) The Association may suspend such Owner's voting rights.
- (b) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (c) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.
- (d) The Association may require the tenant of a Lot or Unit to pay rent to the Association if the Owner fails to pay an assessment pursuant to Utah Code § 57-8a-310.
- (e) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

**13.17 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 in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

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

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

## ARTICLE XIV GENERAL PROVISIONS

**14.01 Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected



in the records of the Association at the time of delivery or mailing, or by sending a copy of the notice by electronic mail to the email address for such person as reflected in the records of the Association. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Director of the Association or to the Association's Registered Agent as reflected in the Association's records at the Office of the Division of Corporations and Commercial Code for the State of Utah. Any notice required or permitted to be given to the DRC may be given by delivering, mailing or electronic mail, the same to the President or Managing Agent of the Association, or to any member of the DRC.

#### 14.02 **Amendment.**

(a) ~~So long as the Declarant owns one or more Lots in the Development, 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 Development. Any amendment shall become effective upon recordation in the office of the County Recorder.~~

(b) After all of Declarant's Lots have been sold to third parties and the Period of Declarant Control has expired, this Declaration and the Plat may be amended upon the affirmative vote of at least sixty percent (60%) of the total outstanding votes in 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 Utah County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. No acknowledgment of any signature used for voting shall be required.

**14.03 Action without Meeting; Action by Written Ballot.** Any action that may be taken at any annual or special meeting of the Association by the Owners may be taken without a meeting and without prior notice by written consents upon compliance with the provisions of Section 16-6a-707 of the Utah Revised Nonprofit Corporation Act. Similarly, action may be taken by written ballot upon compliance with the provisions of Section 16-6a-709 of such Act. In the case of multiple ownership interests, the provisions of Section 11.03 and the presumptions set forth therein shall govern the effectiveness of such ownership consent.

**14.04 Environmental Issues.** Each Owner understands and acknowledges that the buildings, Limited Common Areas and Common Areas have been constructed on natural soil and that Declarant has taken steps to construct the buildings, Limited Common Areas and Common Areas in accordance with engineering requirements based on soil reports provided to Declarant. Each Owner understands and acknowledges that (1) due to the nature of natural soil, movement, shifting, and cracking may occur in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings, etc., and (2) Declarant shall not be responsible for remedial efforts or costs related thereto necessary to remedy, repair or replace damage caused by the movement, shifting, and cracking in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings. Each Owner further understands and acknowledges that mold is a type of fungus that occurs naturally in the environment and is spread by means of microscopic spores in the air. Residential home construction is not, and cannot be designed to exclude mold spores from a home or Unit. Mold spores may enter a Unit through open doorways, windows, and air conditioning systems. Spores in the air also attach themselves to people and animals. Although the vast majority of mold spores are not known to cause health problems, some molds have the potential to cause health effects to individuals whose susceptibility is affected by existing

sensitivities to allergies, underlying lung disease, and suppressed immune systems. Since mold spores exist everywhere naturally in the environment, mold cannot be prevented or removed entirely. Owners must take positive steps to eliminate excessive moisture in the Unit through: (a) regular vacuuming and cleaning; (b) reducing humidity in the home by adequate venting; (c) promptly repairing water leaks; (d) regular maintaining the Units; and (e) performing routine visual inspections for mold growth and signs of leaks, moisture or water damage. The Declarant shall not be liable for any actual or special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect the presence and/or existence of molds, mildew and/or microscopic spores at the Development or any Unit. For purposes of this section, the term "Declarant" shall include, but not be limited to: Georgetown Development, Inc., and its owners, managers, members, representatives, agents or employees.

**14.05 Changes in Price, Size, Design or View Impairment.** Declarant has made no promises, representations or assurances to any Owner regarding the pricing, size, design or configuration of any Unit and each Owner acknowledges that as market conditions or other facts change, such matters may be subject to change, including reduction in prices of Units and changes in size, design or product type. Each Owner further acknowledges that Declarant has made no representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a Unit and that views from a Unit may change or be obstructed by construction, placement of other structures or landscaping. For purposes of this section, the term "Declarant" shall include, but not be limited to: Georgetown Development, Inc., and its owners, managers, members, representatives, agents or employees.

**14.06 Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Development, may be assigned without the consent of any Owner or Owners.

**14.07 Interpretation.** The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**14.08 Condemnation.** If at any time or times an insubstantial or minor part of the Common Area or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent for restoring or replacing any improvements on the remainder of the Common Area. In the event of any other taking or condemnation, the interest of the Association, the Owners and Mortgagees shall be as they may appear.

**14.09 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire interest in a Lot or Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms and provisions of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated

by this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every covenant, condition, and provision of this Declaration.

**14.10 Enforcement of Restrictions.** The Association, any Owner, or any Mortgagee, shall have the right to exercise or seek any remedy at law or in equity to interpret, enforce compliance with, or obtain redress for violation of, this Declaration or other Governing Documents. The prevailing party in any such action shall be entitled to collect court costs and reasonable attorney's 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.

**14.11 Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the City authorizing such termination, an instrument of termination which incorporates and recites the authority of such municipality and which is executed by at least eighty percent (80%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Lot.

**14.12 Right to Enter Lots and Units.** 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 to enter upon any Lot on the areas located outside the exterior boundaries of a Unit, without trespass, and regardless of whether or not the Lot Owner or occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs, and to correct any violation of any of the Governing Documents. The notice set forth in this Section shall not be necessary in case of an emergency threatening other Units, occupants, or other parts of the Development. Nothing in this Section shall be construed to authorize the entry of the Association into the interior of a Unit without the consent of the Lot Owner unless there is an emergency threatening another Unit, the occupants of another Unit, or the structural integrity of a building. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have for notice purposes. Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot or Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

**14.13 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 Development 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 facilities and 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.

**14.14 Attorney Fees.** If the Association utilizes legal counsel to enforce any Governing Document restriction, or after an Owner communicates or demonstrates an intent not to comply with a Governing Document restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Specific 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 Section 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.

14.15 **Effective Date.** This Declaration, and any amendment or supplement thereto, shall take effect upon being filed for record in the Public Records.

## ARTICLE XV SPECIAL DECLARANT RIGHTS

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

- (a) Any improvement shown on the Plat or included in the Project; and
- (b) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.
- (c) Each Owner understands and agrees that Declarant provides no assurances or guarantees, either express or implied, for Common Areas, amenities, and other Project improvements or the location, type, style, or any other aspect of such improvements. The Common Areas, amenities and Project improvements may vary from what is listed on the Plat or other promotional documents of the Project.

15.2. **Expandable Project.** The Declarant expressly reserves the right and option to add or withdraw land from the Development by recording a supplemental declaration for each parcel added or withdrawn that (i) references this Declaration and (ii) includes a legal description of the land annexed or withdrawn. Expansion or contraction of the Development 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. Declarant's right to expand the Project shall not expire until after the Period of Declarant Control.

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 during the entire Period of Declarant Control, and thereafter, for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Units, and signs advertising the Project or any Unit at any location in the Project;
- (b) the right to use easements through the Common Areas as set forth in this Declaration;
- (c) the right to create or designate additional Common Area or Limited Common Area within the Project;
- (d) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;
- (e) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (f) the right to set all assessments for the Association including annual, special, and individual assessments, during the Period of Declarant Control;

(g) 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 Rules, during the Period of Declarant Control;

(h) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration, during the Period of Declarant Control;

(i) the right to make and adopt Rules without being subject to the requirements of Utah Code § 57-8a-217, during the Period of Declarant Control; and

(j) 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 Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

**15.4 Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the sale of Declarant's last Lot, or the expiration of the Period of Declarant Control, whichever is later. 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 Rules 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 Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

**15.7 Transfer of Special 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 the Declarant's rights may, but shall not be required to, be recorded in the office of the Utah County Recorder.

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

**15.9 Easements Reserved to Declarant.** The Declarant has:

(a) 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) 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.

## ARTICLE XVI

### 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 defined in subsections (b) and (c), 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.

(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 Board 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.

(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 Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control 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 voting interests of the Owners in 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 Period of Declarant Control 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.

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

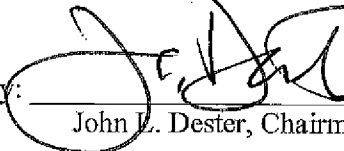
16.7. **No Action.** Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action against the Declarant relating to the Common Areas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

16.8. **Agreement.** 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. **No Amendment.** 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 Period of Declarant Control.

EXECUTED by Declarant on the day and year first above written.

GEORGETOWN DEVELOPMENT, INC.

By:   
John L. Dester, Chairman

STATE OF UTAH     )  
                                  ss.  
COUNTY OF UTAH    )

The within instrument was acknowledged before me this 23<sup>rd</sup> day of December, 2019 by John L. Dester, in the capacity indicated.

  
NOTARY PUBLIC

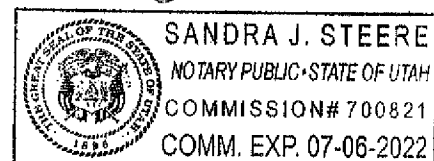


EXHIBIT A

**OLDE IVY TOWNHOMES**

**PLAT A**

Real property located in Provo City, Utah County, Utah, described as follows:

---

Lots 1 – 24, and Common Area, PHASE 1, OLDE IVY planned unit development, according to the official plat thereof on record with the Utah County Recorder, Utah.  
Serial Numbers 48:492:0001 – 48:492:0025

---