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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

# MURRAY HEIGHTS

IN

MURRAY CITY, UTAH

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 20, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 21.**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

MURRAY HEIGHTS

RECITALS

- A. Ivory Development, LLC (“Ivory”) is the developer and declarant of the Murray Heights development project located in Murray City, Utah.
- B. The Project is a planned-unit development. An itegral party of the Project is the community association which has been or will be organized and operating as a Utah nonprofit corporation to management and maintain various common elements and improvements and to enforce the Governing Documents consistent with the Utah Community Association Act, Utah Code 57-8a-101 *et seq.* and the Utah Revised Nonprofit Corporation Act, Utah Code 16-6a-101 *et seq.*
- C. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant, and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By acceptance of a deed or other instrument of conveyance, an Owner joins in and accepts the intent, purpose, and objectives of this Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant’s development of the Project and accepts the burdens and responsibilities that accompany these benefits.
- D. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, the Declarant hereby adopts this Declaration.

ARTICLE 1  
DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code Annotated (“Utah Code Ann.”).
- 1.2 “Additional Covenants” shall mean and refer to any additional restrictions, conditions or covenants imposed on a Unit or Owner as part of a particular phase within the Project. If the Additional Covenants are more restrictive than the provisions of this Declaration, the more restrictive provision shall control. The Association shall have standing and authority to enforce any such Additional Covenants.
- 1.3 “Allocated Interest” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions in Sections 6.2(d) and 20.6 herein. Each Unit is assigned one equal vote,

subject to the limitations on voting set forth in this Declaration and other Governing Documents.

- 1.4 “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Murray Heights adopted by the Declarant.
- 1.5 “Area of Common Responsibility” shall mean and refer to Common Areas and Facilities, Benefited Common Area, and any other area which the Association is responsible to maintain, repair, replace, administer and regulate.
- 1.6 “Area of Personal Responsibility” shall mean and refer to the area which the Owner is responsible to maintain, repair, and replace.
- 1.7 “Articles” shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.8 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration and shall include, without limitation, Benefitted Common Area Assessments and Service Area Assessments.
- 1.9 “Association” shall mean and refer to the Murray Heights Homeowners Association, the membership of which shall include and be comprised of each Owner in the Project. The Association is organized and operating as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.10 “Benefitted Common Area” shall mean and refer to any real property and improvements designated by the Declarant in a Supplement to Declaration or Plat or in another recorded instrument (which designation is made in the sole and absolute discretion of the Declarant) as Benefitted Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefitted Common Area Assessments attributable thereto, to one or more but less than all the Units within the Project and which is or will be conveyed to the Association or as to which the Association will be granted the rights and obligations for primarily the benefit of a particular development phase within the Project. The Supplement to Declaration, Plat or other recorded instrument establishing the Benefitted Common Area shall identify the Units or development phase assigned to that Benefitted Common Area and shall further identify whether the purpose of the Benefitted Common Area is for exclusive use of the Owners and Occupants of the assigned Units or development phase and payment of the Benefitted Common Area Assessments, or only for the purposes of paying the Benefitted Common Area Assessments attributable thereto. By way of illustration and not limitation, Benefitted Common Area might include such things as a shared private alley to access particular Units within a development phase, Phase-specific monuments or signage, mailboxes or other amenity for the exclusive use and enjoyment by the Owners and Occupants of Units within a particular development phase.
- 1.11 “Benefitted Common Area Assessments” shall mean and refer to assessments levied against the Units assigned to a Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

- 1.12 “Benefitted Common Area Expenses” shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace a particular Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.
- 1.13 “Building” shall mean and refer to any of the structures constructed in the Subdivision.
- 1.14 “Bylaws” shall mean and refer to the Bylaws of the Association attached as Exhibit B to the Initial Declaration and rerecorded as Exhibit B to this Declaration for convenience, and all valid amendments and supplements thereto, provided, however, that no amendment to the Bylaws shall be effective until it is recorded.
- 1.15 “City” shall mean and refer to the City of Murray, a political subdivision of the State of Utah, located in Salt Lake County, Utah.
- 1.16 “Common Area and Facilities” shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area designated as such the Plat, including any area designated as open space not dedicated to the City; (b) all Entry Monuments; (c) any street, roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City or designated as Benefitted Common Area; (d) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area not dedicated to the City or public utility; (e) any fence or wall on common property; (f) all recreational amenities within the Project, and (g) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, the and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project’s existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned and operated by the Association.
- 1.17 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.18 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or initially established by the Declarant, consistent with the requirements of the Development Agreement and/or standards described in this Declaration or Rules. The Community-Wide Standards may or may not be set forth in writing.

- 1.19 “Declarant” shall mean and refer to Ivory Development, LLC and its affiliates, successors, and assigns.
- 1.20 “Declarant Control Period” shall mean and refer to the period of time during which the Declarant owns any Unit or any land within the Project.
- 1.21 “Dwelling” shall mean and refer to a dwelling, home, or townhome constructed on a Lot.
- 1.22 “Entry Monuments” shall mean and refer to any and all entry monument and markers and adjacent landscaped common area constructed at the entrances to the Project.
- 1.23 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Articles, the Bylaws, the Rules, and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.24 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.25 “Lot” shall mean and refer to an individual lot created on the Plat on which an attached or detached single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as “Lots.”
- 1.26 “Manager” shall mean and refer to the Person or Persons engaged by the Management Committee to manage the Project.
- 1.27 “Management Committee” shall mean and refer to the body with primary authority to manage the affairs of the Association and also commonly referred to as a “Board of Directors” or the “Board.”
- 1.28 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, and invitees of an Owner or an Occupant.
- 1.29 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Salt Lake County, Utah. The term “Owner” shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term “Owner” also shall not include the Declarant. More than one Owner is referred to herein as “Owners.”
- 1.30 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as “Persons.”
- 1.31 “Plat” shall mean and refer to the record of survey maps for Murray Heights, and any portions thereof, recorded with the Office of Recorder for Salt Lake County, Utah, and all recorded amendments and supplements thereto.
- 1.32 “Project” shall mean and refer to the Murray Heights development and all structures and improvements including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to this Declaration at such time the Supplement to Declaration and final plat map for the additional land is recorded.

- 1.33 “Property” shall mean and refer to the real property within the Project and shall include all easements and rights appurtenant thereto.
- 1.34 “Recreational Amenities” shall mean and refer to any and all of the recreation improvements, if any, constructed in the Project which may include designated open space, and play area, which shall be owned and maintained by the Association for the exclusive use and benefit of Owners and Occupants in the Project and which shall be subject to further Rules regarding use and fees, consistent with § 57-8a-218 of the Act.
- 1.35 “Rules” shall mean and refer to the rules and regulations adopted by the Association.
- 1.36 “Service Area” shall mean and refer to a group of Units designated as a separate Service Area pursuant to this Declaration for the purpose of receiving services or benefits from the Association which are not provided to all Units within the Project. A Service Area may be comprised of noncontiguous Units. A Service Area may or may not correspond to a particular development phase. A Unit may be assigned to more than one Service Area.
- 1.37 “Service Area Assessments” shall mean and refer to assessments levied against the Units in a particular Service Area to pay for Service Area Expenses.
- 1.38 “Service Area Expenses” shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Units within a particular Service Area, which may include amounts for reserves for capital repairs and replacements.
- 1.39 “Single-Family” shall mean and refer to any *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and any ward under legal guardianship, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.
- 1.40 “Subdivision” shall mean and refer to the Murray Heights development, including all Units, Common Areas and Facilities, other property within the Project as shown on the Plat, covering the entire Property and any future phase and additional land developed as part of the Murray Heights development.
- 1.41 “Subdivision Improvements” shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public and private road access and/or utility service to the Units and the Common Areas and Facilities, and includes such other and further construction or installations required by the City or to add value to the Project.
- 1.42 “Supplement to Declaration” shall mean and refer to any amendment or supplement to the Initial Declaration or this Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in this Declaration. A Supplement to Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area and assigning Units or development phase thereto. A Supplement to Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

- 1.43 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.44 “Townhome” shall mean and refer to a Dwelling, Lot, or Unit as shown on the Plat, with or without walls or roofs in common with other another Dwelling, Lot or Unit and which shall include fee title to the underlying real property and an undivided interest in the use of the Common Area and Facilities subject to use restrictions established in the Governing Documents.
- 1.45 “Unit” shall mean and refer to a subdivided Unit within the Subdivision depicted as a separately identified parcel on the Plat, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a Single-Family Dwelling. The term “Unit” includes the Lot and an undivided interest in the use of the Common Areas and Facilities, subject to use restrictions established in the Governing Documents. A parcel of land shall be considered a single Unit until a final subdivision plat is recorded subdividing it into more than one Unit. The term “Unit” does not include Common Area and Facilities, Benefitted Common Area, or property or improvements dedicated to the City or the public.

## ARTICLE 2 THE PROJECT

- 2.1 Binding Effect of Governing Documents. The Declarant hereby declares and Association hereby confirm that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 Nature of the Project. The Project is an expandable planned-unit development, which may be developed and constructed in phases. The Project, when completed, will include 31 Units and Common Areas and Facilities. The Project is not a cooperative and is not a condominium.
- 2.3 Project Name. The Project is named “Murray Heights.” Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and/or on the Plat.
- 2.4 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.
- 2.5 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.6 Expansion of Project. Subject to the Development Agreement, the Project may be expanded or contracted by the Declarant. Additional land, whether or not directly

adjacent to the Project, may be developed and made part of the Project and subject to this Declaration by the recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.

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

3.1 The Unit.

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification on the Plat, each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (i) is part of and an integral part of the Unit structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Unit structure), or (ii) was constructed as part of the original construction of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, water or sewer lines, other private or public utility line, and any other fixtures located within the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.
- (d) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be the first installation of foundations, framing, wallboard, and the like. If the Management Committee, in its sole discretion, determines that the then-current construction varies from the original as-built construction, then the Association, at the expense of the Association or the Owner, in the Management Committee's discretion, may require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Management Committee shall consider: (i) whether the Owner caused the nonconforming construction; (ii) whether the Owner sought or obtained Management Committee approval for any nonconforming construction regardless of whether any such approval was valid or not; (iii) whether other Owners engaged in similar nonconforming construction; (iv) the overall culpability of the Owner as it relates to the nonconforming construction; and (v) the reason for the nonconforming construction.

3.2 Limited Common Area.

- (a) Specific Identification of Limited Common Areas. The Limited Common Area of a Unit, if any, shall consist of areas identified on the Plat as limited common area or limited common ownership that is spatially associated with that Unit.



- (b) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Unit or Units where so identified and may not be severed from the ownership of the Unit.
- 3.3 Allocated Interest of Each Unit in the Votes of the Association. The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth in Article 20 herein. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.
- 3.4 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. Consistent with the Act, the Plat and this Declaration shall control equally and interpreted, where possible, to harmonize and give effect to both. Notwithstanding, in the event of a conflict between the Plat and this Declaration, the more specific provision shall control.

ARTICLE 4  
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 4.1 Organization of Association. The Association shall serve as the organizational body for all Owners.
- 4.2 Legal Organization. The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in this Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of this Declaration and Bylaws.
- 4.3 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 4.4 Availability of Documents.
  - (a) Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.

- (i) The term “available” as used in Section 4.5(a) above shall mean available for inspection or copying at the Association’s principal place of business or the offices of the Manager not later than five (5) business days after receipt of a proper written request, during normal business hours and under other reasonable conditions, except that annual financial statements requested by an Owner may be provided to an Owner within fifteen (15) days of receipt of such request. Documents posted to a website, webpage and/or dropbox maintained by or for the Association accessible to Owners shall satisfy the requirements of this Section 4.4(a).
  - (ii) Notwithstanding anything to the contrary in this Section 4.4, the Association may require that the Owner strictly comply with any and all statutory provisions or other legal requirements applicable to providing this information before providing it.
  - (iii) If an Owner elects to have the Association produce copies of requested documents or records, the Association may assess the Owner reasonable copying costs consistent with § 57-8a-227(4)(b)(ii) of the Act.
- (b) Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Association within thirty (30) days of receipt of a written request.
  - (c) Notwithstanding anything to the contrary in this Section 4.4, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Board, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.

4.5 Management Committee. The governing body of the Association shall be the Management Committee selected pursuant to the Bylaws, subject to Article 20 herein. The Management Committee shall consist of three (3) members. Except as otherwise provided in this Declaration, the Articles, or the Bylaws, the Management Committee, in all instances, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. Except as may be specifically provided in this Declaration, the Articles, or the Bylaws, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

4.6 Management Committee Members.

(a) Qualification.

- (i) Except as provided in Section 20.2 herein, to serve on the Management Committee, a Person must be an Owner, current on payment of Assessments, and, if a natural individual, at least eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principal, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee.
- (ii) As further detailed and explained in the Bylaws, and except during the Declarant Control Period as set forth in Section 20.2 herein, at least two (2) of the Management Committee members, must have as their primary residence a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Management Committee members.

- (b) Reasonable Ongoing Requirements for Management Committee Members. The Bylaws may place reasonable obligations and requirements on existing Management Committee members to retain their membership on the Management Committee, such as a requirement that a Management Committee member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee members. Any Bylaw requirements adopted pursuant to this section shall not be applicable retroactively.

4.7 Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee.

- (a) Except as provided herein, in the Bylaws, or in the Rules, neither any individual Management Committee member nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to:
- (i) amend or terminate any Governing Document;
  - (ii) elect or remove members of the Management Committee;
  - (iii) establish or change the qualifications, powers and duties, requirements, or terms of Management Committee members or the Management Committee; or
  - (iv) authorize or agree to any deviation or exception from the Terms and Conditions.

- 4.8 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or

purchasing a Unit in the Project to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

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

## ARTICLE 5

### GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities set forth in this Article 5 in addition to any others set forth in the Governing Documents or provided by law.
- 5.2 Association Obligation for Area of Common Responsibility. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association for Area of Common Responsibility. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities and Benefitted Common Area, consistent with the Development Agreement. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Benefitted Common Area, the Common Area and Facilities, and the Project, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards. Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association.
- 5.3 Private Infrastructure Systems: The Association owns and maintains the streets, streetlights, sewer, water system, storm drain (pipes grates, lids, and detention chambers) and open space within the Project as Common Area. The Association shall inspect and maintain the private infrastructure systems as required by Murray City standards.
- 5.4 Capital Improvements. After the Declarant Control Period, capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (a) Subject to the Development Agreement and applicable law, any capital improvement to the Project that does not materially alter the nature of the Project, the cost of which does not exceed twenty percent (20% ) of the Association's annual budget, may be authorized by the Management Committee alone.
  - (b) Subject to the Development Agreement and applicable law, any capital improvement to the Project that does not materially alter the nature of the Project, the cost of which exceeds twenty percent (20%) of the Association's annual budget shall require approval of the Management Committee and Owners holding at least thirty percent (30%) of the total Allocated Interests in the Association.
  - (c) Subject to the Development Agreement and applicable law, any capital improvement to the Project that materially alters the nature of the Project, regardless of its cost, must be approved by the Management Committee and

Owners holding more than fifty percent (50%) of the total Allocated Interests in the Association,

- (d) For purposes of this Section 5.3, a material alteration to the Project, for example, is the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as the Entry Monument or the Recreation Amenities. Landscaping alterations are not material unless they cause other material changes such as those listed above.

- 5.5 Paying Expenses. The Association shall provide for the payment of all Association expenses.
- 5.6 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 5.7 Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents and may include restrictions and regulations specific to any Benefitted Common Area and to any Service Area. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 5.8 Hiring Managers and Delegating Responsibilities. The Association shall hire a Manager to assist the Management Committee in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- 5.9 Other Necessary Rights. The Association shall have any other right and authority that is reasonably necessary to carry out the terms of the Governing Documents.
- 5.10 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights; (d) suspend rights to utilize the Recreational Amenities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.11 Discretion in Enforcement.

- (a) Subject to the discretion afforded in this section, the Management Committee uniformly and consistently shall enforce and implement the Terms and Conditions in the Governing Documents.
- (b) The Management Committee shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to (i) impose sanctions, (ii) pursue legal action for a violation of the Governing Documents, (iii) compromise a claim made by or against the Management Committee or the Association; and (iv) pursue a claim for an unpaid Assessment.
- (c) Consistent with Subsection (b) of this Section 5.10, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Committee determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (d) Subject to Subsection (e) of this Section 5.10, if the Management Committee decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
- (e) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

5.12 Reserve Fund. Subject to the exemption in Article 20 herein, the Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 17 of this Declaration.

5.13 Preventing Conflicts with Service Providers and Vendors. Subject to the exemptions in Section 20.13 herein, the Association shall not allow any paid services or materials reasonably valued at more than \$2,500 to be performed or provided for the Association by: (a) any Management Committee member; (b) any relative of any Management Committee member, Manager, or of any officer, employee, or owner of the Manager; or (c) any business or entity in which any Management Committee member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 10% ownership or beneficial interest without prior written disclosure of the relationship to the Management Committee and a written agreement executed by the parties. For the purpose of this Section 5.12, a relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.

- 5.14 Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- 5.15 Annual Meeting. The Association shall arrange for and conduct an annual meeting of the Owners as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- 5.16 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Management Committee may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 5.17 Reinvestment Fee Covenant upon Sale or Transfer of Unit. The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46 in an amount to be determined by the Management Committee and allowed by law. For purposes of this Section 5.16, a transfer is any change in the ownership of the Unit as reflected in the Office of Recorder for Salt Lake County, Utah, regardless of whether it is pursuant to the a sale of the Unit or not but shall not include any transfer between the Declarant and a bulk purchaser of ten or more Units or Lots or transfer between the Declarant and any affiliated entity. The amount shall be set forth by the Management Committee in the Rules consistent with Utah Code Ann. § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Unit for purposes of this section shall be the higher of: (a) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; (b) the purchase price paid for the Unit, related to the transfer; or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (e) the transfer of burdened property by a financial institution, except to the extent that the

reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed \$250 or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (a) requirements for Owners to provide sales and transfer documents; (b) requirements for the timing of responses to requests such as the selection of the appraiser; (c) default provisions if no selection is made such as allowing the Association to select the appraiser; and (d) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

## ARTICLE 6 BUDGETS & ASSESSMENTS

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 6.2 Budget and Regular Assessment.
- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year prior to the beginning of each fiscal year. The Management Committee may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget also shall include an estimate of Benefitted Common Area Expenses for each Benefitted Common Area and Service Area Expenses for each Service Area and may include contingencies and other estimates as the Management Committee deems appropriate.
  - (c) The Management Committee shall determine the amount of the regular Assessments to be paid by a Unit Owner by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit, subject to the Declarant exemption in Article 20 herein.
  - (d) The Management Committee shall determine the amount of Benefitted Common Area Assessments to be paid by the Owners of the Units assigned to each such Benefitted Common Area by dividing the total budget amount for the each of the Benefitted Common Area Expenses by the number of Units assigned to each such Benefitted Common Area.
  - (e) The Management Committee shall determine the amount of Service Area Assessments to be paid by the Owners within each Service Area by dividing the



total budget amount for each Service Area Expenses by the number of Units assigned to each such Service Area.

- (f) The Management Committee shall present the adopted budget to the Owners at an annual or special Association meeting.
  - (g) Except during the Declarant Control Period, a budget may be disapproved within forty-five (45) days after the date of the meeting at which the budget was presented if: (i) the holders of at least fifty-one percent (51) of the total allocated interests in the Association vote to disapprove the budget; and (b) such vote is taken at a special meeting called for that purpose in accord with the requirements set forth in the Bylaws.
- 6.3 Payment of Assessments. Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment, Benefitted Common Area Assessment and Service Area Assessment, as may be the case, annually or on such other quarterly or monthly installment basis as the Management Committee or the Manager may determine.
- 6.4 Adjustments to Regular Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner, thereafter, shall pay to the Association the Owner's adjusted regular Assessment.
- 6.5 Adjustments to Benefitted Common Area Assessments or Service Area Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet Benefitted Common Area Expenses or Service Area Assessments, for any reason, the Management Committee may then revise the appropriate budget and each Owner's share of the new budget total based on the Owner's proportional share of the Benefitted Common Area Expenses or the Service Area Expenses, as the case may be. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner, thereafter, shall pay to the Association the Owner's adjusted Benefitted Common Area Assessment or adjusted Service Area Assessment.
- 6.6 Personal Obligation for Assessment. Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with every other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents, including any Benefitted Common Area Assessments and Service Area Assessments. Any and all Assessment, together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.
- 6.7 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.

- 6.8 Percentage Assessments. Except as otherwise provided herein, and except for special Assessments to individual Units, Benefitted Common Area Assessments and Service Area Assessments, Assessments shall be allocated to Owners based on the Allocated Interest of each Unit.
- 6.9 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.10 Certificate of Payment. Consistent with Utah Code § 57-8a-206, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Management Committee is authorized to charge a ten dollar (\$10.00) fee for issuance of a certificate; provided, however, the Management Committee may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.11 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.12 Special Assessments to a Particular Unit. A Special Assessment may be levied by the Association against a particular Unit and its Owner or against Units within a particular development phase and their respective Owners for:
- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
  - (b) Any other charge not included in a Benefitted Common Area Assessment or Service Area Assessment designated by the Management Committee or the Manager as pertaining to the individual Unit or to Units within a particular development phase consistent with the Governing Documents;
  - (c) Fines, late fees, collection charges, and interest; and
  - (d) Attorneys' fees, costs and other expenses relating to any of the above.

- 6.13 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project or Benefitted Common Area or in a Service Area, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Management Committee, in its discretion.
- 6.14 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 Management Committee, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee 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. In the event that amount budgeted for any Benefitted Common Area or Service Area proves to be excessive in light of the actual Benefitted Common Area Expenses or Service Area Expenses, the Management Committee, in its discretion, shall either: (a) credit the excess against future Benefitted Common Area Assessments for the particular Benefitted Common Area with the excess, or (b) credit the excess against future Services Area Assessments for the particular Service Area that had an excess, as the case may be, or (c) refund the excess to the Owners of the Units assigned to the Benefitted Common Area that had the excess or assigned to the Service Area that had an excess, as the case may be.
- 6.15 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 6.16 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

## ARTICLE 7

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

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 7. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by acceptance of a deed or other instrument of conveyance, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

- 7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of thirty-five dollars (\$35.00). Thereafter, an additional late fee charge of thirty-five dollars (\$35.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing prior to and during the time that an Owner is an Owner. Owners are not liable for any Assessments accruing after they have lawfully transferred title to the Unit to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Unit.
- 7.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Unit for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (a) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's

Unit and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).

- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i), as trustee. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and 57-8a-302 to Melyssa D. Davidson, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 7.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote, the right to utilize the Recreational Amenities and other common facilities, and/or the right to receive utility service paid as part of the Common Expenses; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:
- (a) the impending termination of rights if payment is not received;
  - (b) the amount(s) past due, including any interest and late charges; and
  - (c) the right to request a hearing before the Management Committee.
- 7.9 Requiring Tenant to Pay Rent to Association.
- (a) Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant occupying any Unit for which an Assessment is more than sixty (60) days late; provided, however, that before requiring a tenant to pay lease payments to the Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:
    - (i) the Association's intent to demand the Owner's tenant pay his/her lease payments to the Association if payment is not received within fifteen (15) days;
    - (ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and
    - (iii) that any costs of collection, including, but not limited to attorneys' fees and other assessments that become due may be added to the total amount due and to be paid through collection of the tenant's lease payments;
  - (b) If the Owner fails to pay the amount owing after fifteen (15) days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's

tenant by delivering written notice to the tenant, in accordance with the notice requirements in the Bylaws, that:

- (i) due to the Owner's failure to timely pay Assessments, the Association has notified the Owner of the Association's intent to collect all lease payments until the amount owing is paid, in full;
  - (ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid, in full; and
  - (iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.
- (c) The Association shall mail to the Owner a copy of the notice to given to the tenant.
  - (d) The tenant to whom notice under Section 7.9(b) is given shall pay to the Association all future lease payments as they become due and owing to the Owner beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the Owner is paid.
  - (e) The delinquent Owner shall credit each payment that his/her tenant makes to the Association pursuant to this Section 7.9 against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required under Section 7.9(d).
  - (f) Within five (5) business days after the amount owing is paid, in full, the Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Association and a copy of said notice shall be mailed to the Owner.

7.10 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for

any other reason related to the ultimate attempt to collect unpaid Assessments); and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

- 7.11 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments or maintain the Unit.

## ARTICLE 8 GENERAL RESPONSIBILITIES OF OWNERS

- 8.1 Responsibilities of Owners. Owners shall have the responsibilities set forth in this Article 8 in addition to any others set forth in the Governing Documents or provided by law.
- 8.2 Owner Obligations for Area of Personal Responsibility. Except to the extent that maintenance, repair, and upkeep of Unit exteriors has been assigned to the Association, each Owner shall be responsible to maintain his/her Unit in an attractive, neat, clean, usable, safe, and sanitary condition, in accordance with the Community-Wide Standards. This obligation shall include, without limitation, maintenance, repair and/or replacement of all structural elements, fixtures, lines, pipes, equipment, systems, and other improvements within the boundary of the Unit, as well as all mechanical equipment, systems, lines, pipes, or other appurtenances located outside of the Owner's Unit.
- 8.3 Responsibility for Limited Common Area and Immediately Adjacent Common Area. In addition to the Unit, and except to the extent that maintenance and upkeep is assumed by Association, each Owner shall be responsible to maintain the Limited Common Area appurtenant to the Owner's Unit and Building and the Common Areas and Facilities immediately adjacent to the Owner's Unit, in net and clean and free of all debris, grease, spills, leaks, trash, litter, and personal property. Except to the extent that landscape maintenance is assumed by the Association, each Owner shall be responsible to maintain landscaping, if any, in the courtyard area appurtenant to the Owner's Unit.
- 8.4 Common Walls. Each wall built as part of the original construction of a Unit erected on the boundary or dividing line between Units shall constitute a common wall. The cost of maintenance, repair or replacement of a common wall shall be shared by the Owners who make use of the wall in accordance to their proportional use thereof. Subject to the provisions of Article 11 governing insurance, if a common wall is damaged, any Owner who has used the wall may restore it, and, the other Owner or Owners of the common wall shall contribute to the cost in proportion to their interests, without prejudice, however, to the right of the restoring Owner to call for such larger contribution from the other Owners under Utah law regarding liability for negligence, or willful acts or omissions.
- 8.5 Prior Authorization from Management Committee for Maintenance, Repair, and Alterations Affecting Unit Exterior. Notwithstanding anything in this Article 8 to the

contrary, all maintenance, repairs and replacements affecting the Unit exterior, appearance of the Building in which the Unit is located, overall appearance of the Project, the integrity of any Building or other structure, any common wall, Common Areas and Facilities, and/or common element or system, shall require prior written approval of the Management Committee to ensure quality of construction, integrity of the Building, common wall, and/or common element or system, and uniformity of appearance. No Owner shall allow his/her Unit, or the immediately adjacent Common Areas and Facilities, to detract from the uniform appearance and design of the Project, or the health, safety, and use and enjoyment of the Association members.

ARTICLE 9  
EASEMENTS, ACCESS AND USE RIGHT

9.1 Grant of Easement. Declarant hereby reserves itself and grants to the Association, a non-exclusive, perpetual right of way and easement over, under, across, and through the Property and the Project, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities, and any Benefitted Common Area, and to do all things that are reasonably necessary to fulfill the Association's obligations for Area of Common Responsibility, subject to all of the terms, covenants, conditions and restrictions set forth herein.

9.2 Construction Easement. The Declarant hereby reserves for itself, its affiliates and assignees, a temporary construction easement over, under, across, and through the Property and the Project, including, without limitation, the Units, Common Areas and Facilities, and Benefitted Common Area, for the purpose of doing all things that are reasonably necessary as a part of constructing any Subdivision Improvement including all physical improvements as well as all Buildings and Lots. This construction easement further includes the right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area and Facilities or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Association; provided, however, that the Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Association pursuant to this Section 9.2.

Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt the Owner's quiet enjoyment of the Unit until all improvements are complete, and waives any right to object to such construction activity; provided, however, the Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners.

The Declarant's construction activities pursuant to the easement granted hereunder shall not be considered a violation of any use restriction or Rules.

9.3 Utility Easements. Easements and rights-of-way over, under, across, and through the Property and the Project for the installation, maintenance, repair and replacement of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, storm drain or other drainage systems, telecommunication fixtures



and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Declarant or the Management Committee to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and/or the Units by the Owners or Occupants. Each Owner, by acceptance of a deed or other instrument of conveyance, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Each Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

- 9.4 Encroachment Easements. If any part of the Common Area and Facilities or Benefitted Common Area encroaches or shall hereafter encroach upon a Building or Lot, a valid easement for such encroachment and for the inspection, maintenance, repair and replacement of the same shall and does exist. If any part of a Building encroaches or shall hereafter encroach upon the Common Area and Facilities, Benefitted Common Area, or upon an adjoining Building or Lot, a valid easement for such encroachment and for the maintenance of the same shall and does exist. Such easement for encroachments shall extend for the duration of the encroachment. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities, Buildings or Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the manner of construction, error in the Plat, ground settling, rising or shifting, or changes in position caused by repair or reconstruction of the Project or any part thereof.
- 9.5 Right of Access. Each Owner shall have a right of ingress and egress over, across, and through the Common Area and Facilities as necessary for access to the Building and the Owner's Unit and any Limited Common Area appurtenant to the Owner's Unit and shall have the right to the horizontal, vertical and lateral support of the Owner's Unit. Such right of access and right to support shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant right be separated therefrom.
- 9.6 Right of Access for Emergency Services. A right of access and right of ingress and egress over and across any private street, roadway, parking area, or open space within the Project is hereby granted to any governmental or quasi-governmental body having jurisdiction over the Project for purposes of providing police and fire protection, transporting school children, and providing emergency and other governmental or municipal services.
- 9.7 Nonexclusive Owner Right and License to Use Common Area and Facilities. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the nonexclusive right and license for use and enjoyment of the Common Area and Facilities and the nonexclusive right and license for the use and enjoyment of the Benefitted Common Area to which that Owner's Unit has been assigned, if any, subject to any use restrictions provided in this Declaration or in the Rules or other Governing Document. Such nonexclusive use right and license shall be appurtenant to and shall pass with title to

the Unit and in no event shall such appurtenant right and license be separated therefrom. Authorized Occupants shall have the same right and license for the use and enjoyment of the Common Area and Facilities and assigned Benefitted Common Area, if any, as the Owner whose Unit the Occupant is occupying.

- 9.8 No View Easements. Views from a Unit and the Project are not assured or guaranteed in any way and no view easement shall be granted to any Owner. There is no warranty concerning the preservation of any view or view plane from the Project. Each Owner, by acceptance of deed or other instrument of conveyance, expressly acknowledges and agrees that there is no view easement or view right appurtenant to the Unit or the Project.

## ARTICLE 10 USE LIMITATIONS AND CONDITIONS

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners and Community-Wide Standards. Pursuant to 57-8a-218(15) of the Act, the requirements of 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Association.
- 10.2 Signs. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, City, county, state or federal body.
- 10.4 Temporary Structures. Subject to the special Declarant rights in Article 20 herein, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or used therein unless it is approved by the Management Committee.

- 10.5 Parking. Unless otherwise permitted by the Association in the Rules, no automobiles or other vehicles of any type (including, without limitation, oversized, commercial, or recreational vehicles, boats, and trailers) (collectively, “vehicles”) shall be parked, stored, or located within any portion of the Project except in the Unit’s driveway or garage. The Association may adopt Rules relating to the parking of vehicles within the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove or immobilize or cause to be removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict or limit parking on City or public roadways within the Project by Owners, Occupants and by people associated with the use of Units. Notwithstanding anything to the contrary herein, nothing in this Section 10.5 shall give the Association any general police powers over the public portions of the project or the portion of the Project dedicated to the City.
- 10.6 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to City ordinance, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.7 Repairs. No repairs of any vehicles, detached machinery, equipment, or fixtures shall be made within the Project except as may be permitted by the Management Committee in the Rules.
- 10.8 Unightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon.
- 10.9 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets are allowed in the Project, subject to the terms and conditions of this Declaration and the Rules; provided, however, that no more than two (2) animals of any type may be kept in a Unit. No livestock or dangerous reptile may be kept in any Unit. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Management Committee may adopt Rules adding further Terms and Conditions related to animals within the Project not inconsistent with this Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have animals, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the Project shall be liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal.

10.10 Residential Occupancy.

- (a) No trade or business may be conducted in or from any Unit unless:
  - (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;
  - (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (iii) the business activity does not involve solicitation of Occupants or Owners of the Project;
  - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Management Committee, in its sole discretion.
  - (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
  - (vi) the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
  - (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
  - (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
  - (ix) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- (b) Except as allowed under Section 10.11(a) above and subject to the exclusion in Article 20 herein, no Unit may be used for any purpose other than as a Single-Family Dwelling.

10.11 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions.

No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Management Committee and/or Owners (as required in this Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.12 shall be null, void, and of no legal effect.

10.12 Slope and Drainage. Notwithstanding anything to the contrary in this Declaration, no grading, construction, or landscaping, and no structure, plant, or other material shall be permitted or allowed to remain which may damage or interfere with the established ratios of Units to open space or which may create erosion or sliding, or which may alter drainage channels or obstruct or retard the flow of water through such drainage channels or which may interfere with any utility or right of way.

10.13 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. Notwithstanding, the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project shall not be deemed a violation of this Section 10.14.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) regardless of whether the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.14 shall survive any subsequent sale of the Unit by an indemnifying Owner.
- (c) As used in this Section 10.14, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.14, "Environmental Law" means applicable federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

ARTICLE 11  
INSURANCE

- 11.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance specific to a Benefitted Common Area or a Service Area may be obtained by the Association and the cost included in the Benefitted Common Area Expenses, or in the Service Area Expenses, as the case may be.
- 11.2 Annual Insurance Report. Prior to each annual meeting of the Association, the Management Committee shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and Utah law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage, and, if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;” and (d) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. The most recent annual insurance report shall be made available to the Owners at or before the annual meeting of the Association and shall be made available to any Owner at any other time upon written request.
- 11.3 Property Insurance.
- (a) Hazard Insurance.
- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Common Area and Facilities and the physical structure of all attached Units and Buildings, Limited Common Area appurtenant to Buildings or attached Units, and appurtenant fixtures and betterments. Consistent with § 57-8a-405(4) of the Act, the Association may but is not obligation to provide property insurance for detached Units that are not physically attached to any other Unit or to a Common Area and Facilities structure. If the Association’s blanket policy of property insurance does not include

detached Units, the Owner of a detached Unit shall be responsible to obtain property insurance coverage for the Owner's Unit.

- (1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Area or otherwise permanently part of or affixed to Common Areas and Facilities, Buildings, Units, or Limited Common Areas, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.
  - (2) At a minimum, the blanket policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all other perils normally covered by "special form" property coverage.
  - (3) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
  - (4) The blanket policy shall include either of the following insurance endorsements to assure full insurable value replacement cost coverage: (a) a "Guaranteed Replacement Cost Endorsement" under which the insurer agrees to replace the insurable property regardless of the cost; or (b) a "Replacement Cost Endorsement" under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an "Agreed Amount Endorsement" which must waive or eliminate the requirement for coinsurance.
  - (5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (a) "Inflation Guard Endorsement," if available; (b) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (c) "Equipment Breakdown," if the Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

- (i) The Association's policy provides primary insurance coverage; and
- (ii) Notwithstanding Subsection 11.3(b)(i) and subject to Subsection 11.3(b)(iii), the Owner is responsible for the Association's insurance deductible; and the property insurance portion of the Owner's insurance policy applies to that portion of the loss attributable to the Association's insurance policy deductible.
- (iii) As used in this Subsection (3):
  - (1) An Owner who owns a Unit that has suffered Unit Damage (as defined in the Act) as part of a Covered Loss (defined in the Act) is responsible for an amount calculated by applying the Unit Damage Percentage (defined in the Act) for that Unit to the amount of the deductible under the Association's property insurance policy.
  - (2) If an Owner does not pay the amount required under Subsection (11.3)(b)(iii)(2) within thirty (30) days after substantial completion of the repairs to the Unit or the Limited Common Area appurtenant to the Unit as may be applicable, the Association may levy an Assessment against the Owner for that amount.
- (c) Flood Insurance.
  - (i) Except for detached Units, if any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering at a minimum, that portion of the Project located within the Special Flood Hazard Area.
  - (ii) If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association, in its discretion, may purchase earthquake insurance as the Management Committee deems appropriate for Common Area and Facilities and Buildings, attached Units and other structures for which the Association has a legal obligation to obtain property insurance.
- (e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep separate an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) Association's Right to Not Tender Claims that are under the Deductible. If, in the exercise of its business judgment, the Management Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the



Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area and Facilities; and (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in section 11.3(b)(iii)(2), recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.

- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under this Article 11 for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it may 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 may be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- 11.4 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers of the Association, 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: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Management Committee members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the Association; and (iv) officers, directors, and employees of any Manager of the Association.

- 11.7 Workers' Compensation Insurance. The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 11.8 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 Named Insured. The named insured under any policy of insurance shall be the Association. Subject to Sections 11.1 and 11.3(a)(i), each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner. In the discretion of the Management Committee or upon written request executed by Owners holding fifty percent (50%) of the total Allocated Interests, the Management Committee shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Section as the Owners or Management Committee (as the case may be) shall require.
- 11.11 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

- 11.12 Waiver of Subrogation Against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any individuals residing with a Unit Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.13 Right of Action. Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.14 Applicable Law. This Declaration is specifically subjecting the Association to the applicable insurance requirements and provisions of Part 4 of the Utah Community Association Act, and any amendments thereto enacted by law. It is the intent of this Section that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 12  
EMINENT DOMAIN

- 12.1 Taking of a Unit. If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the undivided interests in the Common Areas and Facilities and Allocated Interests in the Association shall be reallocated among the remaining Units.
- 12.2 Taking of Common Area. If the Common Area and Facilities or Benefitted Common Area, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 12.3 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Management Committee shall send notice to each Owner that the Project shall be terminated. The Management Committee shall wind down the Association in accordance with applicable law and the funds distributed to each Owner in proportion to the Owner's Allocated Interests. Payment to Owners of Units then subject to a recorded mortgage or trust deed shall be made jointly payable to Owners and the interested Lender.
- 12.4 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

ARTICLE 13  
AMENDMENTS

- 13.1 General Amendment Requirements. Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article 20 herein and elsewhere in this Declaration, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 13.2 Scope of Amendments. Subject to Article 20 herein, this Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association.
- 13.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 13.1 shall be executed by the President and the Secretary of the Management Committee shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend this Declaration have been complied with. The amendment shall be effective when it is recorded in the Office of the Recorder for Salt Lake County, Utah.
- 13.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, deleting, adding or modifying Benefitted Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 13.5 Amendments to Benefitted Common Area. Subject to Article 20 herein, any Supplement to Declaration or other recorded instrument designating a Benefitted Common Area a may be in the same manner as an amendment to this Declaration described in Section 13.1 above.
- 13.6 Amendment to Service Area. Subject to Article 20 herein, any group of Owners may petition the Management Committee to designate their Units or Lots as a Service Area for the purpose of receiving from the Association special benefits or services from the Association which are not provided to all Units or Lots. Upon receipt of a petition signed

by a majority of the Owners of the Units within the proposed Service Area, the Management Committee shall examine and consider the terms upon which the requested benefits or services might be provided and shall notify the Owners in the proposed Service Area of such terms and attendant expenses (which may include a reasonable administrative charges). If such a petition is approved by the Management Committee and by the Declarant during the Declarant Control Period, and by the Owners holding at least sixty-seven percent (67%) of the Allocated Interests within the proposed Service Area, the Association shall provide the requested benefits or services under the terms and conditions established by the Management Committee. The costs and administrative charges associated with such benefits or services shall be assessed as Service Area Assessments to the Units within such newly-formed Service Area.

- 13.7 Amendment to Conform to Law. The Management Committee may, without the approval of the Owners, amend this Declaration to conform this Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change this Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section,
  - (b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded,
  - (c) The Management Committee must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of this Declaration; (iii) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Association (1) notifies the Owner that it intends to amend this Declaration pursuant to this section, (2) provides the Owner a right to object to the amendment within thirty (30) days, and (3) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
  - (d) Within forty-five (45) days of providing the information to the Owners required by this Section 13.5, no more than thirty percent (30%) of the Allocated Interest holders have objected, in writing, to the amendment.

- (e) Having otherwise complied with all of the requirements of this Section 13.7, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Salt Lake County.

#### ARTICLE 14

#### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 14.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat and this Declaration equally, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control.
- 14.2 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Declarant has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 14.3 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 14.4 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 14.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential planned unit development and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

- 14.6 Applicable Law. Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to this Declaration.
- 14.7 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 14.8 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 15 NOTICE

- 15.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:
- (a) Notice to an Owner from the Association:
    - (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
    - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
    - (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered twenty-four (24) hours after it is sent;
    - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered twenty-four (24) hours after it is sent;or

- (v) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.
  - (vi) Notwithstanding anything to the contrary in this Section 15.1, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
  - (vii) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (1) two (2) days after the event or action for which notice was given or (2) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (i) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
  - (ii) In case of any emergency involving immediate and substantial damage to a Unit, the Common Areas and Facilities, Benefitted Common Area, or another Unit, before entering the Unit, the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (iii) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit, the Association shall: (1) give notice to the Owner that an entry is required at least one (1) week in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Unit, (b) the date and time of the entry, (c) the purpose of entering the Unit, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, (f) any other information the Association deems appropriate to include; and (2) post the written notice described above on the front door to the Unit at least three (3) days prior to entry into the Unit.



- (c) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
  - (i) by a written notice delivered personally to the Manager or President, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the Management Committee has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered twenty-four (24) hours after it is sent; or
  - (iv) by facsimile (whether to a machine or by other means) to the Association sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered twenty-four (24) hours after it is sent.

ARTICLE 16  
ATTORNEYS' FEES AND COSTS

16.1 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this

Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

- (c) Exception to Owner's Liability for Fees and Costs. If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Term and Condition, or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## ARTICLE 17 RESERVES

17.1 Requirement for Reserves. Subject to the exemption in Section 20.15 herein, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of regular or special Assessments.
- (b) Amount. In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Management Committee determines, based on the reserve analysis, to be prudent. For purposes of this Section 17.1, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
- (c) Owner Veto. Within 45 days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the total Allocated Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
- (d) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts.
- (f) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The

Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (g) **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) **Summary and Copies of Reserve Analysis.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

17.2 Exceptions for Benefitted Common Area and Service Area Reserves. The requirements set forth in Subsections 17.1 (b), (c), (e), (f) and (h) shall not apply to reserves, if any, for a Benefitted Common Area or Service Area. A reserve analysis prepared for any Benefitted Common Area or Service Area shall comply with Subsection 17.1(g) and a copy provided to the Owners of those Units assigned to the Benefitted Common Area or Service Area, as the case may be.

ARTICLE 18  
LEASING AND NON-OWNER OCCUPANCY

- 18.1 Declaration and Rules Govern Non-Owner Occupancy. The leasing and non-owner occupancy of Units shall be governed by this Article 18, the Rules, and procedures adopted as provided herein.
- 18.2 Definitions. For the purpose of this Article 18, the following definitions shall apply:
- (a) “Non-Owner Occupied Unit” means:
    - (i) For a Unit owned in whole or in part by a natural person or persons, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence;
    - (ii) For a Unit owned by an entity, including a corporation or limited liability company, the Unit is occupied by someone when no individual owning at least twenty-five percent (25%) of the ownership or voting interests in the entity occupies the Unit as a primary residence; or
    - (iii) For a Unit owned by a trust, the Unit is occupied by someone when neither a beneficiary nor a trustor of the trust occupies the Unit as a primary residence.
  - (b) “Family Member” means the parent, sibling, or child of an Owner and/or the parent, sibling, or child of an Owner’s spouse.
- 18.3 Restrictions and Requirements for Leasing and Non-Owner Occupancy. Subject to the exemptions in the Act for an Owner’s military deployment or an Owner’s temporary relocation by an employer and for occupancy of the Unit by Family Members, Owners of Units must comply with the following provisions:
- (a) Any lease or agreement for otherwise allowable non-owner occupancy shall be in writing and shall require that the Occupant shall comply with this Declaration, the Bylaws, and the Rules, and specify that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;
  - (b) If required in the Rules or requested by the Management Committee, a copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association within the time period provided for in the Rules or required by the Management Committee;
  - (c) An Occupant may not occupy any Unit for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not).
  - (d) Owners who make their Units available for lease or non-owner occupancy as allowed herein (*i.e.*, for an initial lease term of at least six (6) months), may do so through a licensed and insured professional property management company approved by the Management Committee, in writing.
    - (i) The Management Committee may maintain a list of approved management companies which shall be made available to Owners upon

request, consistent with the Act and the provisions of Section 4.4 of this Declaration. Additional management companies may be considered and approved by the Management Committee, in its sole discretion.

- (ii) Lease of a Unit by Owner or through VRBO, Airbnb, HomeAway, or the like is strictly prohibited.
  - (iii) To be approved as a property management company in the Project and to continue to be allowed to operate in the Project, a property management company must ensure that all Assessments for the managed Unit(s) are timely paid to the Association.
  - (iv) The Management Committee may further require as a condition of approval and/or continued operation in the Project that property management companies utilize a lease form approved by the Management Committee.
  - (v) A property management company that fails to comply with the requirements hereby may be prohibited by the Association from operating within the Project.
  - (vi) Owners utilizing an unauthorized property management company may be subject to fines and other enforcement action for violation of this Declaration.
- (c) Lease of less than all of the Unit or lease of only a portion of the Unit is prohibited.
  - (d) The Owner shall be responsible for the Occupants of the Units and for any invitee of any Occupant and shall ensure their compliance with this Declaration, Bylaws, and Rules and shall be jointly and severally liable for any violation of the Governing Documents. In addition to any other remedy for non-compliance with this Declaration, the Association shall have the right (but not the obligation) to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Association, the Management Committee, and the Manager shall not be liable for any action taken pursuant to this Subsection 18.5(e) and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Subsection.

18.4 Permitted Rules. The Management Committee may adopt Rules:

- (a) Regarding reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like;
- (b) Establishing other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration; and

- (c) Limiting the total number of Non-Owner Occupied Units within the Project if necessary to satisfy the requirements of a Lender for financing the purchase of Units.

ARTICLE 19  
GENERAL PROVISIONS

- 19.1 Enforcement. The Association shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation, including, but not limited to attorneys' fees and costs incurred in conjunction with such enforcement.
- (a) Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorneys' fees and costs.
- 19.2 No Liability of Officers. To the fullest extent permitted by applicable law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 19.3 Use of Funds Collected by the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.
- 19.4 Owner Liability and Indemnification. Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed or other instrument of conveyance, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and

defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

- 19.5 Variations. The Management Committee, at its option and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Declaration if the Management Committee determines, in its discretion: (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial effect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Community-Wide Standards and not prohibited by the Development Agreement. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with the Development Agreement, City Ordinance or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.
- 19.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 19.7 Security. Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By acceptance of a deed or other instrument of conveyance and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Management Committee are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates

to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

- 19.8 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) and/or Utah Code 57-21-1 *et seq.* as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, 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 anyone else.
- 19.9 No Representations and Warranties. **EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.**

## ARTICLE 20 DECLARANT RIGHTS

- 20.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all rights and powers provided for in this Article 20. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article 20.
- 20.2 Right to Appoint the Management Committee During Declarant Control Period. The Declarant shall have the right to appoint and remove all Management Committee members during the Declarant Control Period. In the appointment of Management Committee members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 20.3 Declarant Retains All Rights and Authority During Declarant Control Period. During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to



have assumed unless the Declarant notifies the Association otherwise) the powers and authority of the Design Review Board without the Management Committee's appointment of Design Review Board members. The Declarant shall determine whether to hire professional management during the Declarant Control Period.

- 20.4 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant gets approval from any Owner of a Unit that has any boundary modified by the Plat.
- 20.5 Assessment Exemption. The Declarant shall be exempt from any Assessments including any Regular Assessment, Benefitted Common Area Assessment, Service Area Assessments or special Assessment for any and all Units owned by Declarant unless such Units are rented.
- 20.6 Right to Amend Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, any Supplement to this Declaration establishing a Benefitted Common Area or Service Area or Additional Covenants, the Bylaws, the Articles of Incorporation, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to § 57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.
- 20.7 Right to Designate Benefitted Common Area and Service Area and Modify Prior Designations. Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to designate Benefitted Common Area and Service Area and to designate the particular Units or development phase assigned to such Benefitted Common Area or Service Area, as the case may be. During the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to modify any previously designated Common Area or Service Area and to adjust or modify the assignments of Units, or development phase, respectively thereto.
- 20.8 Assignment of Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.

- 20.9 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in this Declaration as it relates to the Units owned by the Declarant.
- 20.10 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 20, may not be substantively or procedurally altered during the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void *ab initio*.
- 20.11 Use of Units and Common Areas and Facilities for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities and any part of any Benefitted Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.
- 20.12 Right to Use Common Area and Facilities for Special Events. The Declarant may use the Common Area and Facilities to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions: (a) the availability of the Common Area and Facilities; (b) payment of costs and expenses incurred and indemnification of the Association against any loss or damage resulting from the special event; (c) return of the Common Area and Facilities in the same condition as existed prior to the special event.
- 20.13 Exemption from Service Provider and Vendor Conflict Provision. The restrictions set forth in Section 5.12 of this Declaration shall not apply to service providers or vendors engaged by the Association during the Declarant Control Period.
- 20.14 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 20 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner, by acceptance of a deed or other instrument of conveyance, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 20.15 Exemption from Statutory Obligations During Declarant Control Period. Pursuant to § 57-8a-217(6) of the Act, Declarant hereby exempts the Association from the statutory rule-making provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act

and Article 17 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

ARTICLE 21  
CONFLICT AND LITIGATION AVOIDANCE

- 21.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by acceptance of a deed or other instrument of conveyance) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by acceptance of a deed or other instrument of conveyance, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this desire to avoid litigation but, nevertheless, to ensure a reasonable avenue for recovery against a Person responsible for faulty construction, the Declarant may obtain and provide warranties to the Association from subcontractors that the Association may enforce related to the development and construction of the Project. It is the intent of the parties hereto, as agreed to by each Owner by and upon taking title to a Unit, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages of any kind arising from or related to construction or development of the Project. The intent of this Article 21 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, the Benefitted Common Area and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration. The provisions in this Article 21 are separate from and in addition to the provisions in § 57-8a-229 of the Act regarding Declarant liability.
- 21.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty

by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

21.3 Waiver of Subrogation and Release. The Association and each Owner, by and upon taking title to a Unit, waives any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant (including principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives. The Association and each Owner agree that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant (including its principles, officers, employees, owners, or representatives) from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

21.4 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed: (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period to facilitate the Declarant's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, its contractor or subcontractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall

administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.

- (c) “Notice of Claim” shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged defect or condition, if applicable; (v) samples of any alleged defective materials; (vi) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives), for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.
- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Association shall indemnify and defend the Declarant (including its principles, officers, managers, shareholders, members, employees, agents and representatives) against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Declarant’s development and/or construction of the Project and/or any damages arising therefrom. Except only as may be limited by law, by and upon taking title to a Unit, each Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty. The Association and each Owner acknowledge and agree that such warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim and to indemnify the Declarant from and against any liability arising therefrom.

- (g) Subject only to any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units and Common Areas and Facilities “AS IS,” with all faults and with no warranties of any kind except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**
- (h) If otherwise allowed by law notwithstanding the terms of this Article 21, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any “action”) against a Declarant or any contractor or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have a properly-noticed meeting of the Owners, with all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those Persons present, including the Management Committee, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:
- (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: “The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Unit and your ability to sell your Unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue”;
  - (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;
  - (iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;
  - (iv) a written statement of each Management Committee member indicating that member’s position on the litigation;
  - (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

- (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and
- (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action.

In addition to the requirements above and before commencing any action, the Association must obtain the approval of seventy-five percent (75%) of the total Allocated Interests in the Association (not 75% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Any such a special meeting must occur no sooner than thirty (30) days and not later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any such action, including but not limited to copying costs, deposition costs, expert witness costs, and filing fees.

- (i) Any agreement with a law firm or attorney under which the law firm would represent the Association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (1) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action as necessary to prosecute the action as quickly as the court system will allow; (2) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum (a) the work that was completed in the last month, (b) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month broken down by time entry, person performing the work, and a description of each time entry, (c) the costs incurred by the attorneys and any experts in the prior month, (d) a running tally of all costs and time, by attorneys and staff members, since the beginning of the action updated monthly, (e) a list of what is needed to move the action toward resolution, (f) the projected dates for each action that is needed to move the action toward resolution, (g) an explanation of why any projected action cannot be completed immediately; (3) the attorney or law firm will provide an opinion letter regarding the Association's claims prior to commencing any action that will, at a minimum, explain each claim, cite the law supporting the claim, cite the facts supporting the claim, provide an application of the law to the facts and analysis of each claim, cite any potential defenses or weaknesses to any claim including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Association's likelihood of success on each claim, an analysis of potential damages including citations to the law and facts supporting that analysis, and an opinion of the lawyer or law firm on the damages the Association would likely be awarded for each claim; and (4) a requirement that the Association be permitted to terminate the engagement of the law firm or attorney at any time with no requirement to pay any attorney fees incurred under a contingency arrangement up to that date if, in the Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any

disruption to the operations of the Association is not worth the continuation of the action, (c) the Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.

- (j) The existence of procedures and/or requirements in this Article 21 applicable to claims against the Declarant or its contractors or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that are prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.
- (k) Prior to engaging any lawyer or firm to represent the Association related to any litigation described in this section, the Association shall obtain independent counsel to review the engagement letter governing that representation and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this Declaration.

21.5 Land Owners. All Persons owning land that is initially or subsequently incorporated into the Project and who sign this Declaration or any amendment thereto subjecting that land to this Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 21.



Dated this 25<sup>TH</sup> day of August, 2022.

IVORY DEVELOPMENT, LLC

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

Signature

CHRISTOPHER P. GAMVROULAS

Printed

Its: PRESIDENT

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

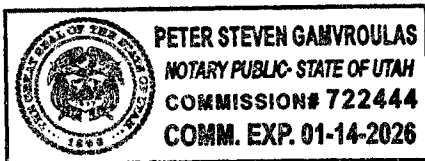
On this 25<sup>TH</sup>, day of August, 2022, personally appeared before me

CHRISTOPHER P. GAMVROULAS, whose identity is personally known to me, (proven  
(Name of Document Signer)

on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is

the PRESIDENT, of IVORY DEVELOPMENT LLC  
(Title or Office) (Name of Entity)

and that said document was signed by him/her in behalf of said Corporation, with all necessary authority, and acknowledged to me that said Corporation executed the same.



Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The Units, Lots, and real property referred to in the foregoing Declaration of Covenants, Conditions and Restrictions for Murray Heights are located in Salt Lake County, Utah and are described more particularly as follows:

**BOUNDARY DESCRIPTION**

A portion of the Northeast Quarter of Section 14 and the Southeast Quarter of Section 11, Township 2 South, Range 1 West, Salt Lake Base & Meridian, located in Murray City, Utah, more particularly described as follows:

Beginning at the Northeast Corner of Section 14, T2S, R1W, SLB&M: running thence along the easterly Section line of said Section 14, S00°12'39"E 182.16 feet; thence West 33.00 feet to the westerly right-of-way line of 700 West Street; thence along said westerly right-of-way line S00°12'39"E 11.94 feet to a fence corner; thence westerly along said fence line to and along the northerly line of ASPEN HEIGHTS Subdivision, according to the Official Plat thereof recorded February 6, 1979 as Entry No. 3233551 in Book 79-2 at Page 44 in the Office of the Salt Lake County Recorder, S89°50'11"W 571.61 feet to a point on a fence line; thence along a fence line N22°01'44"W 2.49 feet to a fence corner; thence along a fence line S89°56'40"W 135.92 feet; thence along a fence line S88°47'34"W 129.07 feet to a point on the easterly line of WALDEN HILLS No. 6 Subdivision, according to the Official Plat thereof recorded April 16, 1981 as Entry No. 3554978 in Book 81-4 at Page 74 in the Office of the Salt Lake County Recorder; thence along said easterly line N15°42'00"W 28.60 feet to a point on the southerly right-of-way line of 5400 South Street (SR-173), known as Project No. 0132; thence along said southerly right-of-way line the following four (4) courses: (1) easterly along the arc of a non-tangent curve to the left having a radius of 3,014.80 feet (radius bears: N06°51'02"W) a distance of 182.15 feet through a central angle of 03°27'42" Chord: N81°25'07"E 182.13 feet; thence (2) N68°10'11"E 350.18 feet; thence (3) N73°02'30"E 260.80 feet; thence (4) N89°51'48"E 89.55 feet to said westerly right-of-way line of 700 West Street; thence N89°51'48"E 33.00 feet to the easterly Section line of Section 11, T2S, R1W, SLB&M; thence along said easterly Section line S00°18'52"E 65.01 feet to the point of beginning.

Contains: 3.04 acres+/-

Parcel Numbers:

21-14-228-031-0000, 21-14-228-032-0000, 21-14-228-033-0000, 21-14-228-034-0000, 21-14-228-035-0000, 21-14-228-036-0000, 21-14-228-037-0000, 21-14-228-038-0000, 21-14-228-039-0000, 21-14-228-040-0000, 21-14-228-041-0000, 21-14-228-042-0000, 21-14-228-043-0000, 21-14-228-044-0000, 21-14-228-045-0000, 21-14-228-046-0000, 21-14-228-047-0000, 21-14-228-048-0000, 21-14-228-049-0000, 21-14-228-050-0000, 21-14-228-051-0000, 21-14-228-052-0000

EXHIBIT B

**BYLAWS  
FOR  
MURRAY HEIGHTS  
HOMEOWNERS ASSOCIATION**

**BYLAWS**

These bylaws are hereby adopted and established as the Bylaws for the Murray Heights Homeowners Association (the “Association”). These Bylaws and any valid amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants of the Project.

ARTICLE I  
DEFINITIONS

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in this Declaration of Covenants, Conditions, Restrictions for Murray Heights (“the Declaration”) shall have the same defined meanings when used in these Bylaws.
- 1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

ARTICLE II  
OWNERS

- 2.1 Annual Meetings.
- (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
  - (b) Date and Time. The date and time of the annual meeting shall be determined by the Management Committee, in its discretion.
  - (c) Purpose. The Annual Meeting shall be held for the following purposes.
    - (i) electing members of the Management Committee;
    - (ii) distributing of the budget, if it was not distributed before the meeting;
    - (iii) announcing the current deductible for the Association’s property insurance and the Owners’ potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
    - (iv) transacting such other business as may properly come before the meeting.
  - (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Management Committee’s

discretion, by the Management Committee at a subsequent meeting of the Management Committee.

- (e) Election of Management Committee Members. If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

## 2.2 Special Meetings.

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

2.3 Place of Meetings. The Management Committee may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting.

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

2.5 Owners of Record. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than thirty (30) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Person appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 Quorum. Those Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.

2.7 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly

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

- 2.8 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but one Owner shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 Ballots and Written Consent. The Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act. If a secure site is established and administered by the Association or Manager, online or electronic ballots are permitted.
- 2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request consistent with Section 4.4 of the Declaration.

### ARTICLE III MANAGEMENT COMMITTEE

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) **Number of Members.** The Management Committee shall be composed of three (3) individuals meeting the qualifications stated in the Declaration and Section 3.1(b) below, subject to the Declarant Rights set forth in the Declaration.
  - (b) **Member Requirements.** At all times after the end of the Declarant Control Period and turnover of the Project from the Declarant, at least two (2) of the Management Committee members must have as their primary residence a Unit in the Project. For purposes of service on the Management Committee an "Owner" may include the spouse of an Owner. Any candidate whose election or

appointment would contravene requirements of this Section 3.1(b) shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss. Candidates must also be current Assessments.

- (c) Term. Except during the Declarant Control Period, and except for the terms of one (1) of the initial member of the Management Committee elected upon turnover of management of the Association who shall serve a one (1) year term in order to create staggered terms, the term of each Management Committee member shall be two (2) years.
- (d) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (e) Disqualification. If any Management Committee member is alleged to not meet the qualification requirements in the Declaration and any Management Committee member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee member is qualified or not, and during this period shall not make any further decisions. If the Management Committee member is not qualified, the Management Committee member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee member was not qualified. If a Management Committee member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section.
- (f) Removal for Failure to Participate. If any Management Committee member shall fail to appear at three (3) successive regular Management Committee meetings in a row or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other

Management Committee members may by unanimous vote remove that member and appoint a new member.

3.2 Meetings.

- (a) Regular Meetings. The Management Committee shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) Who Is Entitled to Attend. Consistent with Utah Code Ann. § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.
- (c) Special Meetings. Special meetings of the Management Committee may be called by or at the request of any two Management Committee members or the President. Notice of any special meeting shall be given at least 48 hours prior thereto to each Management Committee member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (d) Quorum and Manner of Acting. A majority of the Management Committee members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee members shall be the act of the Management Committee. The Management Committee members shall act only as a Management Committee, and individual Members shall have no powers as such.
- (e) Place and Notice of Meetings. The Management Committee may designate any place in the City as the place of meeting for any regular meeting called by the Management Committee but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Management Committee members and Owners requesting notice, in writing, shall be given at least ten (10) days' notice of regular meetings, except that notice shall not be required for emergency meetings.
- (f) Executive Session.
  - (i) The Management Committee or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session. A member of the Management Committee who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Management Committee.
  - (ii) Executive sessions may be held to discuss and make decisions related to the following matters:
    - (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;

- (2) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
  - (5) The Management Committee or the Sub-Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.
- (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

### 3.3 Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each and every Management Committee member, in writing, either:
  - (i) votes for the action or
  - (ii) votes against or abstains from voting, and fails to exercise his/her right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (i) reasonably describing the action taken;
  - (ii) signed by each Management Committee member; and
  - (iii) not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Management Committee members then in office were present and voted.



- (d) A Management Committee member may revoke consent to any action given pursuant to this section by communicating, in writing, that the member has changed his/her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee and may be described as an action taken at a meeting of the Management Committee members in any document.
- (g) For purposes of this section:
  1. “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a signature block or typed name at the bottom of an email satisfies the requirement for a signature.
  2. “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
  3. Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  4. Any response to any electronic communication shall be:
    5. to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
    6. to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  7. A communication shall satisfy the requirement to “describe the action taken” if:
    - (1) it is in the form of an email and it includes with the email the content of prior emails in the email chain that reasonably describe or include the proposed action;
    - (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
    - (3) the writing from the Management Committee member otherwise sufficiently references the proposed action.

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

- 3.5 Resignation and Removal. A Management Committee member may resign at any time by delivering a written resignation to any member of the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.
- 3.6 Vacancies. If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee member is removed. Any Management Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their predecessor.

#### ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Association shall be the president or chairperson (the “President”), secretary (the “Secretary”), and treasurer (the “Treasurer”).
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer’s death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office except during the Declarant Control Period. All officers must be members of the Management Committee during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as

required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.

- 4.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.
- 4.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

## ARTICLE V SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Management Committee may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The

membership of each such Sub-Committee designated hereunder shall include at least one (1) Management Committee member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.

- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Management Committee hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Management Committee.
- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

## ARTICLE VI INDEMNIFICATION

- 6.1 Indemnification. No Management Committee member, officer, or member of a Sub-Committee (including any member of the Design Review Board) shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Management Committee member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee member, officer of the Association, or member of a Sub-Committee or by

reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Management Committee member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Management Committee members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Management Committee member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE VII AMENDMENTS

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period as set forth in Article 20 of the Declaration.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

## ARTICLE VIII

## WAIVER OF IRREGULARITIES

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