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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND RESERVATION OF EASEMENTS  
FOR  
LOFTS ON 35<sup>TH</sup>  
(a Planned Unit Development)

Prepared by:



**ARTICLE XV OF THIS DECLARATION INCLUDES SPECIAL DECLARANT  
RIGHTS, WARRANTY LIMITATIONS, AND IMPORTANT CONFLICT  
RESOLUTION AND LITIGATION AVOIDANCE PROVISIONS.**

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**EXHIBIT A – Legal Description**

**EXHIBIT B – Bylaws**

**DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS, AND RESERVATION OF EASEMENTS  
FOR  
LOFTS ON 35<sup>TH</sup>  
(a Planned Unit Development)**

**PREAMBLE**

This Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements for Lofts on 35<sup>th</sup> (hereafter, the “**Declaration**”) is adopted by the Declarant and is effective as of the date it is recorded with the Salt Lake County Recorder’s office.

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

This Declaration affects the real property located in the City of West Valley, Salt Lake County, State of Utah, described with particularity on **Exhibit A**, which exhibit is attached hereto and incorporated herein by reference.

The Community Association Act, Utah Code § 57-8a-101 *et. seq.* (the “**Act**”), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities, and restrictions of that section. The remedies in the Act and the Association’s Governing Documents – provided by law or in equity – are cumulative and not mutually exclusive.

**RECITALS**

A. Hallmark Homes and Development, a Utah corporation, as Declarant, will develop the real property described in Exhibit A as a planned unit development.

B. Declarant has established or will establish the Lofts on 35<sup>th</sup> Home Owners Association, and the Association will be vested with powers of, among other matters, owning, maintaining, and administering the Common Area, administering, and enforcing the covenants and restrictions pertaining to the Properties, promulgating Rules and Regulations through its Board and any Architectural Control Committee, and collecting and disbursing the Assessments and charges hereinafter created.

C. The Declarant intends that the Properties shall be maintained, developed, and conveyed pursuant to a general plan for all of the Properties and subject to certain protective covenants, easements, equitable servitudes, liens, and charges, all running with the Properties as hereinafter set forth.

D. The Declarant hereby declares that all of the Properties shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions, and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of the Properties, in furtherance of a general plan for the protection,

maintenance, subdivision, improvement, and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all persons having or acquiring any right, title, or interest in the Properties, or any part thereof, their heirs, successors, and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successors and assigns.

E. These Recitals shall be deemed covenants as well as recitals.

## **ARTICLE I** **DEFINITIONS**

The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 ACC. “**ACC**” shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2 ACC Restrictions and Rules. “**ACC Restrictions and Rules**” shall mean such restrictions, rules, design guidelines, or standards as may be adopted and promulgated by the ACC, or the Board, pursuant to Sections 8.1 and 8.4 hereof, and as such may be amended from time to time.

1.3 Act. “**Act**” shall mean the Community Association Act, Utah Code § 57-8a-101 *et seq.*, and as such may be amended from time to time.

1.4 Annual Assessment. “**Annual Assessment**” shall mean the annual charge against each Owner and the Owner’s Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.5 Articles. “**Articles**” shall mean the Articles of Incorporation of the Association filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code, as such Articles may be amended from time to time.

1.6 Assessment. “**Assessment**” shall mean any monetary charge imposed or levied on an Owner or against a Lot by the Association as provided for in the Governing Documents.

1.7 Association. “**Association**” shall mean the Lofts on 35<sup>th</sup> Home Owners Association, a corporation formed under the Utah Revised Nonprofit Corporation Act, its successors and assigns, and the membership of which shall include each Owner of a Lot. 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.

1.8 Beneficiary. “**Beneficiary**” shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

1.9 Benefitted Assessment. “**Benefitted Assessment**” shall mean Assessments levied in accordance with Article VI against particular Lots to cover costs pursuant to a menu of services which the Board may from time to time authorize.

1.10 Board. “**Board**” shall mean the Board of Directors of the Association, elected, or appointed pursuant to the Governing Documents of the Association.

1.11 Budget. “**Budget**” shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under the Governing Documents.

1.12 Bylaws. “**Bylaws**” shall mean the Bylaws of the Association. The initial Bylaws of the Association are those attached hereto as **Exhibit B**, incorporated herein by reference. The Bylaws may be amended from time to time. No amendment to the Bylaws shall be effective until it is recorded with the County Recorder’s office.

1.13 Common Area. “**Common Area**” means that portion of the Project owned by the Association, as shown on the Plat as dedicated to the common use and enjoyment of the Owners, and all Improvements constructed thereon. Common Area does not include any fixture, structure, or other area is within the boundaries of or a part of a Lot and any public roadways in the Project. Except as identified on the Plat or in this Declaration, Common Area includes, but is not limited to all: (a) real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple, not otherwise located within the boundaries of a Lot; (b) fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water to the extent that they located outside of a Lot and serve more than one Lot; (c) applicable apparatuses, installations, and Improvements clearly intended and existing for common use; (d) any Limited Common Area; and (e) other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.14 Common Expenses. “**Common Expenses**” shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: (a) maintenance, management, operation, repair, replacement, and improvement of the Common Area and Improvements which is maintained by the Association; (b) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and any employees; (c) the costs of all utilities (other than utilities separately metered and charged to individual Lots), any snow removal from Common Areas performed by the Association, certain landscaping, and other related services provided by the Association; (d) insurance and bonds required or allowed by this Declaration or the Act; (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 for the benefit of the Owners (collectively, and not otherwise defined or precluded by the Governing Documents or any applicable law).

1.15 Community-Wide Standard. “**Community-Wide Standard**” shall mean the standard of conduct, construction, architecture, maintenance, or other activity generally prevailing at the Properties, or the minimum standards established pursuant to the ACC Restrictions and Rules, Rules and Regulations, and Board resolutions, whichever is a highest standard. Declarant shall initially establish such standard and it may contain both objective and subjective elements.

The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Properties change.

1.16 Corrective Assessments. “**Corrective Assessment**” shall mean Assessments levied in accordance with Article VI a charge against a particular Owner and the Owner’s Lot representing the costs to the Association incurred in taking corrective action against an Owner or the Owner’s Lot as allowed under the Governing Documents.

1.17 Declarant. “**Declarant**” shall mean Hallmark Homes and Development, a Utah corporation, its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title and interest of Hallmark Homes and Development in the Properties by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Hallmark Homes and Development as Declarant under this Declaration.

1.18 Deed of Trust. “**Deed of Trust**” shall mean a mortgage or a deed of trust, as the case may be.

1.19 Development. “**Development**” shall mean the Lofts on 35<sup>th</sup> subdivision, also known as the Alpizar P.U.D., according to the Plat on file with the Salt Lake County Recorder’s office.

1.20 Dwelling Unit. “**Dwelling Unit**” shall mean a single-family dwelling, with or without walls or roofs in common with other single-family dwelling units. The Dwelling Unit includes fee title to the real property lying directly beneath the single-family dwelling, and, subject to Sections 1.27, 1.28, and 2.14 below, such other land as shown as private property within Lot boundary lines on the Plat.

1.21 Electronic Transmission, Electronically Transmitted. “**Electronic Transmission**” or “**Electronically Transmitted**” shall mean a process of communication not directly involving the physical transfer of paper or other material which is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or other means.

1.22 Fiscal Year. “**Fiscal Year**” shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.23 Governing Documents. “**Governing Documents**” shall mean this Declaration, the Plat, the Bylaws, the Articles, ACC Restrictions and Rules, Rules and Regulations, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Project. Pursuant to Section 228 of the Act, the following hierarchy of the Governing Documents prevails in the event of any conflicting provisions: (i) the Declaration and Plat, read together; (ii) the Articles; (iii) the Bylaws; and (iv) the Rules and Regulations.

1.24 Government Assessments. “**Government Assessment**” shall mean Assessments required by local governmental authorities having jurisdiction and authority over the Properties.

1.25 Holidays. “**Holidays**” shall mean Christmas, Thanksgiving and New Year’s Day, and such other holidays as the Board may designate from time to time.

1.26 Improvement. “**Improvement**” shall mean any structure or appurtenance thereto of every type and kind to or on the Properties, including but not limited to Dwelling Units and

other buildings, walkways, sprinkler pipes, or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and other utilities fixtures or equipment.

1.27 Limited Common Area. “**Limited Common Area**” means that portion of the Common Area owned by the Association and specifically designated in this Declaration or the Plat for the exclusive use and enjoyment of one or more Owners of a particular Lot to which such Limited Common Area is adjacent and/or appurtenant and as further provided for in Section 2.14. The Limited Common Area includes the driveways, patios, and decks adjacent to the particular Lots. The Association, through the Board, may adopt Rules and Regulations clarifying and defining the use and maintenance of the Limited Common Area to the extent such are not inconsistent with the Declaration.

1.28 Lot. “**Lot**” shall mean any one of the individual lots designated on the Plat. Each Lot is owned in fee simple by the Owner. Any area within the surveyed Lot boundaries but outside the walls of the Dwelling Unit shall be treated as Limited Common Area for purposes of the Lot Owner’s use and maintenance thereof. To the extent the Lot boundaries are larger than the Dwelling Unit, the purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to approval by the ACC and all other provisions of this Declaration.

1.29 Manager. “**Manager**” shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers, or functions of the Association as further provided in this Declaration and in the Bylaws.

1.30 Member, Membership. “**Member**” shall mean any Person holding a membership in the Association, as provided in this Declaration. “**Membership**” shall mean the property, voting, and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Governing Documents.

1.31 Mortgage, Mortgagee, Lender, Mortgagor. “**Mortgage**” shall mean any Recorded first mortgage or first deed of trust. The term “Deed of Trust” or “Trust Deed” when used herein shall be synonymous with the term “Mortgage.” The term “**Mortgagee**” or “**Lender**” shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. “**Mortgagor**” shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term “Trustor” shall be synonymous with the term “Mortgagor,” and the term “Beneficiary” shall be synonymous with the terms “Mortgagee” and “Lender.”

1.32 Notice of Board Adjudication. “**Notice of Board Adjudication**” shall mean notice of the decision of the Board, delivered in person or in writing by mail, Electronic Transmission, or personal service, of its decision rendered at a hearing held pursuant to a Notice of Noncompliance by the Board and Right to Hearing.

1.33 Notice of Members Meeting. “**Notice of Members Meeting**” shall mean the notice of a meeting of the Members required or provided for in the Governing Documents, which shall be in writing and shall satisfy the notice requirements for meeting as set forth in the Bylaws.

1.34 Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing. “**Notice of Noncompliance by the ACC**” shall mean a notice from the ACC directed to an Owner specifying in reasonable detail the nature of such Owner’s noncompliance with the ACC Restrictions and Rules. “**Notice of Noncompliance by the Board and Right to Hearing**” shall mean a notice from the Board directed to an Owner specifying in reasonable detail the nature of such Owner’s noncompliance with any provisions of the Governing Documents and the opportunity for the Owner to have a hearing before the Board as provided for in the Bylaws.

1.35 Occupant. “**Occupant**” shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling Unit or on a Lot, including, without limitation, family members, tenants, guests, and invitees of an Owner or another Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Dwelling Unit and Lot against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Dwelling Unit or of any unauthorized entry and use of the Lot (which shall include the duty to verify the physical condition and occupancy of the Dwelling Unit and Lot, if it is left unoccupied).

1.36 Owner. “**Owner**” shall mean the Person or Persons, including Declarant, who is the owner of record (in the office of the County Recorder) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.37 Person. “**Person**” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other entity.

1.38 Plans and Specifications. “**Plans and Specifications**” or “**Plans**” shall mean such plans and specifications as may be required by this Declaration and by ACC Restrictions and Rules.

1.39 Plat. “**Plat**” or “**Plats**” shall mean the record of a survey map, or maps, of the Project recorded in the records of the Salt Lake County Recorder, as the same may be modified, amended, supplemented, or expanded in accordance with the provisions of Declaration concerning amendments or supplements to this Declaration in conjunction with annexations to the Properties as herein provided.

1.40 Project. “**Project**” shall mean the Properties, all structures and Improvements to the Properties, and all easements and rights appurtenant to the Properties.

1.41 Properties. “**Properties**” shall mean all real property in the Development any additional real property which may be annexed into the Development as described in any Supplemental Declaration.

1.42 Record, Recorded, Filed, or Recordation. “**Record,**” “**Recorded,**” “**Filed,**” or “**Recordation**” shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Salt Lake County, Utah.

1.43 Rules and Regulations. “**Rules and Regulations**” or “**Rules**” shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Act, this Declaration,

and the Bylaws, and as such Rules and Regulations may be amended from time to time, as the Board deems necessary or desirable to: (a) aid it in administering the affairs of the Association; (b) insure that the Properties are maintained and used in a manner consistent with the interests of the Owners; (c) regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon; and (d) establish penalties for the infractions thereof.

1.44 Recreational Vehicles. “**Recreational Vehicles**” shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles, off road motorcycles, and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing and trailers that carry any of the foregoing.

1.45 Special Assessments. “**Special Assessment**” shall mean Assessments charged against each Owner and the Owner’s Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.46 Streets. “**Streets**” shall mean streets, roadways, and thoroughfares used by Vehicles in the Development. All Streets in the Development are private and constitute part of the Association’s Common Area.

1.47 Supplemental Declaration. “**Supplemental Declaration**” shall mean any supplemental Declaration of covenants, conditions, restrictions, and reservation of easements, or similar instrument, which extends the provisions of this Declaration to all or any duly annexed real property into the Development and may contain such complementary or amended provisions for such additional land as are herein authorized by this Declaration.

1.48 Trust Deed for Assessments. “**Trust Deed for Assessments**” shall mean the deed of trust created by this Declaration in Article VII to further secure the Owner’s obligation to pay Assessments and to provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code § 57-1-19, *et seq.*, as amended from time to time.

1.49 Vehicle. “**Vehicle**” shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects – or are designed to be transported on wheels, skids, skis or tracks – including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

## **ARTICLE I-A** **DESCRIPTION OF PROPERTY**

The Development is not a condominium or a cooperative. The real property which is associated with the Development, and which has been and shall hereafter continue to be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of all the property described in Exhibit A hereto; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident



thereto; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, under, across, and through the Properties, and any Improvements now or hereafter constructed thereon, as may be reasonably necessary for Declarant (in a manner which is reasonable and consistent with the provisions of this Declaration):

- (a) to construct and complete the Improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;
- (b) to construct and complete, in additional phases of developed annexed into the Development (each a “**Phase**”), such Improvements as Declarant shall determine to build in its sole discretion;
- (c) to improve portions of the Properties with such other or additional Improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or successor may reasonably determine to be appropriate; and
- (d) to develop, construct and improve lands adjacent to the Properties.

If, pursuant to the foregoing reservations, the Properties or any Improvement thereon is traversed or partially occupied by a permanent Improvement or utility line, a perpetual easement for such Improvement or utility line shall exist. Such easement shall be in favor of such utility as is providing the service. All sewer, water, telephone, and electric lines shall be owned by the respective utilities serving the Properties.

## **ARTICLE II**

### **OWNERS’ PROPERTY RIGHTS**

2.1 Owners’ Easements of Enjoyment. Each Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from the Owner’s Lot and in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated therefrom. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser who resides on such Lot. All such rights are subject to this Declaration.

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

All of Lot \_\_\_\_\_ of the Lofts on 35<sup>th</sup>, or Alpizar P.U.D., subdivision, a planned unit development, according to the official Plat thereof, subject to the Declaration of Declarations, Covenants, Restrictions, and Reservation of Easements for Lofts on 35<sup>th</sup>, on file in the office of the Salt Lake Recorder.

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

2.3 Transfer of Title to Common Area. Declarant represents that it will, on or prior to the first conveyance of a Lot in any Phase, convey to the Association title to all Common Area contained in that Phase, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and close of escrow of the last Lot in such Phase.

2.4 Limitations on Common Area Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or third-party for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by: (i) at least sixty-seven percent (67%) of the voting interests of each class of Membership, which assent may be obtained through written consent or through a vote of the Members present in person, by proxy, or represented by ballot entitled to cast at a meeting duly called for the purpose; (ii) the local municipal authority; and (iii) so long as Class B voting exists, the Declarant. The quorum requirement for such meeting shall be as set forth in the Bylaws.

(b) The right of the Association, to be exercised by the Board, to establish uniform Rules and Regulations as set forth in Section 14.9;

(c) The right of Declarant and its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Area and any facilities thereon, without cost, to full access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties as provided herein, until the last close of escrow for the sale of a Lot in the Properties; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(d) The rights and reservations of Declarant as set forth in Article I-A of this Declaration;

(e) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish, or standard of construction of such Improvement;

(f) The right of the Association to replace destroyed trees or other vegetation and to plant trees, shrubs, and ground cover upon any portion of the Common Area;

(g) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area and to limit the number of guests and invitees of Owners who at any given time are permitted to use the Common Area;

(h) The easements shown on the Plat and those reserved or implied in this Declaration, including without limitation, the easements set forth in Sections 2.6 through 2.12.

(i) The right of the Board to suspend a Member's voting rights as provided for in the Bylaws and the right to suspend a Member's right to the Common Areas and any facilities

thereon during any period of violation of any provision of this Declaration, or the ACC Restrictions and Rules, or any Rule or Regulation of the Association;

(j) The right of the Association to enter into cross-use easements, agreements or leases which provide for use of the Common Areas and any facilities thereon by a similar community association in consideration for use of the Common Areas and any facilities thereon of the other Association, or for cash consideration; and

(k) The right of the Association to be exercised by the Board, to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

2.5 Parking Restrictions. In addition to the parking restrictions provided for in Section 10.7, the Association, through its Board, is hereby empowered to establish “parking,” “guest parking” and “no parking” areas within the portions of the Common Area improved as Streets, driveways, turnarounds, or community parking areas. The Association, through its Board, is also empowered to include in the Rules and Regulations, the ability to enforce the parking restrictions imposed pursuant to this Section 2.5 and those set forth in Section 10.7 by all means lawful for such enforcement, including the removal of any violating Vehicles at the expense of the owner of the Vehicle and imposing fines.

2.6 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements for public services of any governmental or quasi-governmental body having jurisdiction over the Project, including but not limited to, the rights of access, ingress, and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.

2.7 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements for public and private utility purposes, including but not limited to, the right of any public utility of ingress or egress over the Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants located on the Common Area. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the local municipality.

2.8 Drainage and Irrigation Easements. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself, the Association and all future Owners within the Properties, easements for drainage and irrigation.

2.9 Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed by Declarant, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally constructed by Declarant, encroaches upon the Common Areas, Limited Common Areas, or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.10 Declarant Easement; Indemnification. For so long as (a) Declarant owns any Lot in the Properties or (b) Declarant has the right to annex additional real property into the

Development, Declarant hereby expressly reserves for its benefit, for the benefit of its agents, employees and contractors, and for the benefit of its successors and assigns, a nonexclusive easement in, to, and over the Common Area for access, ingress, egress, use and enjoyment, in order to show the Properties to its prospective purchasers, or to develop, market, sell, lease or otherwise dispose of the Properties.

2.11 Cross-Use Easement. Declarant reserves the right to grant a cross-use easement for ingress and egress permitting members of adjoining developments the right of ingress and egress over any private Streets in the Development.

2.12 Association Easement. The Association shall have an easement to be exercised during daylight hours, except in the case of an emergency as determined in the sole discretion, of the Board, to enter upon the Lots for the purpose of carrying out and performing the functions of the Association as set forth in the Governing Documents. This easement includes the Association's right and access to areas of the Project necessary for the Association to maintain the landscaping and remove snow, as set forth in the Association's Governing Documents.

2.13 Waiver of Use. No Owner may become exempt from personal liability for Assessments duly levied by the Association nor release the Lot or other property owned by the Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any Improvements thereon or by abandonment of the Owner's Lot or any other property in the Properties.

2.14 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot. If any taxes or assessments of a particular Lot become, or may become in the opinion of the Board, a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may then levy against the Lot and the Lot's Owner as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.15 Lot / Limited Common Area. Each Lot is owned in fee simple by the Owner. Any area within the surveyed Lot boundaries but beyond the walls of the Dwelling Unit is owned by the Owner but shall be treated as Limited Common Area for purposes of use and maintenance as set forth in the Association's Governing Documents. The purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to approval by the ACC and all other provisions of this Declaration. If the Association allows Owners to install fences which enclose a portion of the Common Area adjacent to Lots, then such fenced-in Common Area shall be treated as Limited Common Area appurtenant to the Owner's Lot and the Owner shall be responsible for all maintenance, repair, and replacement of such Limited Common Area and any elements and Improvements thereon. The Board may adopt Rules and Regulations concerning the use of the Limited Common Areas and such areas of the Lot treated as Limited Common Areas.

2.16 Community-Wide Standard. Owners recognize that the Community-Wide Standard is for the benefit of the Properties and the Owners, and that such Community-Wide Standard contains both objective and subjective standards, appearances, and other factors which may evolve over time. Owners further agree to abide by the prevailing Community-Wide Standard applicable to the Properties at any given time.

2.17 Display of the Flag. The Association may not prohibit an Owner from displaying the United States flag inside a dwelling or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States flag on the Common Area.

2.18 Views. Unless otherwise specifically noted on the Plat or a deed conveyed by the Declarant, views from a Lot, Dwelling Unit, or Common Area in the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant of such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.

2.19 Hazard Notice. Each Owner, by acceptance of a deed to a Lot, assumes any and all risk of damage and personal injury resulting directly or indirectly from the hazards which are obvious to, or which may be reasonably discovered by, any reasonable Owner or Occupant and further holds Declarant, its officers, directors, agents, shareholders, attorneys, engineers, employees, successors and assigns harmless from any and all claims of damages of whatever nature, and by any Person, caused directly or indirectly by water, erosion, deposition, flooding, flowage, whether sudden or gradual and whether resulting from surface, flood or rainfall waters. Each Owner, by acceptance of a deed to a Lot, further acknowledges that the Development is subject to the normal everyday sounds, odors, sights, equipment, facilities, and all other aspects associated with Project area.

### **ARTICLE III**

#### **LOFTS ON 35<sup>TH</sup> HOME OWNERS ASSOCIATION**

3.1 Organization of Association. The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.

3.2 Parties and Powers. The Association shall have such duties and powers as set forth in the Act and the Governing Documents, as such documents are amended from time to time.

3.3 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4 Transfer. Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

3.5 Non-Liability for Tort. From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of the Owners, the Owners shall be and remain wholly free and clear of any and all liability to, or claims by, all other Owners and all Persons, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any Person or property on, or in respect of the use and operation of, the Common Area or any of its Improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the Common Area shall be within,

under, and subject to the Association – and not Owners. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its Improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

The Association shall not be liable, in any civil action brought by or on behalf of a Member, for bodily injury occurring to a Member, or a Member's guests, invitees, licensees or trespassers, on the Association's Common Area or Limited Common Area. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area or Limited Common Area by its willful, wanton, or grossly negligent act of commission or omission.

3.6 Board Acts for Association. Except as limited in the Declaration or the Bylaws, the Board acts in all instances on behalf of the Association.

#### **ARTICLE IV** **VOTING RIGHTS**

4.1 Vote Distribution. The Association shall have the following two classes of voting membership:

(a) Class A. Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot which the Owner owns. In no event, shall more than one Class A vote exist with respect to any Lot.

(b) Class B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) the expiration of seven (7) years from the date the Declarant ceases to offer any Lots in the Project, including any area which is added to the Project through a Supplemental Declaration, for sale in the ordinary course of business; or
- (ii) the day the Declarant, after giving written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

4.2 Multiple Ownership. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves; however, fractional voting by multiple Owners of the same Lot is prohibited. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

4.3 Expansion of Terms. If the Development is expanded through Supplemental Declarations, the terms of this Article shall be expanded and extended to such additional lands. Specifically including, without limitation, the extension of Class B voting rights to the additional lands and Lots created thereon.

**ARTICLE V**  
**JURISDICTION OF ASSOCIATION**

The Association is, and has been, organized to provide for the operation, maintenance, preservation and architectural control of the Properties and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Properties and the Members of the Association to the fullest extent allowed by law and also as provided for in the Association's Governing Documents, as such documents may be modified from time to time. The Association, at the discretion of the Board, may also maintain public areas within the Properties.

**ARTICLE VI**  
**COVENANT FOR ASSESSMENTS**

6.1 Creation of Assessment Obligation. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to personally covenant and agree to pay to the Association: (1) Annual Assessments for Common Expenses; (2) Special Assessments; (3) Corrective Assessments; (4) Benefitted Assessments; (5) Government Assessments; (6) Reinvestment Fee Assessments; and (7) any other amount or Assessment levied by the Board pursuant to the Governing Documents. All such Assessments are established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment, Corrective Assessment, Benefitted Assessment, or Government Assessment which exceeds the amount reasonably necessary for the purpose, or purposes, for which the Assessment is levied. All such Assessments, including interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessments are made. If title to a Lot changes while there are Assessments owing, the Lot remains subject to those Assessments and the new Owner of the Lot becomes personally liable for the amount of the Assessments. Each such Assessment, including and together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area.

(a) So long as the Declarant has an option to unilaterally subject additional property to this Declaration, the following shall apply: the Declarant, builder, contractor, investor, or other Person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, shall pay no Assessment unless a Dwelling Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves. In no event, however, shall the subsidy exceed the amount of the monthly Assessments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

6.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used to promote the common health, safety, benefit, and welfare of the Owners; for the improvement and maintenance of the Common Area, including establishing

and funding a reserve to cover major repair or replacement of Improvements within the Common Area; enhancing and preserving the quality of life of the Owners and Occupants in the Project; enhancing or preserving the value of the Properties; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided in the Governing Documents. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. Unless otherwise established by the Board and communicated to the Owners, each Owner shall pay to the Association the Owner's Annual Assessment in equal monthly installments due on the first day of each month. The Declaration, in its discretion, may establish the initial amount of the Annual Budget. The Common Expenses of the Association, and therefore the Annual Assessment, may increase because of, among other reasons, Common Area facilities constructed in the sole discretion of Declarant. Nothing herein shall obligate Declarant to construct any Common Area facilities.

(a) In the event the Board determines that the estimate of total charges for the current year as set forth in the Budget is, or will become, inadequate to meet all Common Expenses, excluding the extraordinary expenses identified in Section 6.4(a), for any reason, the Board may then revise the Budget and each Owner's Annual Assessment amount based upon revised Budget. Upon notice of the adjustment, and unless otherwise modified by the Board, each Owner shall, thereafter, pay to the Association the Owner's adjusted regular Annual Assessment in equal monthly installments.

6.4 Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:

- (i) An extraordinary expense required by an order of a court.
- (ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.
- (iii) Property taxes or other charges payable to a municipality as described in this Declaration, and specifically Section 6.12.
- (iv) To protect the Common Areas against foreclosure.
- (v) To cover other short falls, or other needs approved by the Board as being reasonably necessary to the protection or preservation of the Properties,



provided that any such Assessment levied under this subparagraph (v) does not exceed fifty percent (50%) of the current Annual Assessment.

(b) Approved by Association. Special Assessments which must be assented to by more than fifty percent (50%) of the votes of those Members represented in person, by proxy, or by ballot are entitled to cast at a meeting duly called and held for such purpose, involve:

- (i) The replacement or improvement of the Common Area or Improvement thereon; and
- (ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible.

6.5 Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and the Owner's Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, which are equal to the costs incurred by the Association for corrective action, taken or performed pursuant to the provisions of the Governing Documents, including, without limitation, Sections 8.7, 9.1, and Article XI of this Declaration, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, any fees or costs charged by the Association's Manager, any legal fees and costs incurred by the Association, and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within forty-five (45) days following delivery of the Notice of Board Adjudication and shall bear interest thereafter at the rate of one and one-half percent (1.5%) per month, compounded monthly, until paid in full.

6.6 Benefitted Assessments. The Board may levy Benefitted Assessments against a particular Lot, or Lots, for expenses incurred or to be incurred by the Association to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or Occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize (which might include, without limitation, landscape maintenance, caretaker services, etc.), which Benefitted Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred at the request of the Owner.

6.7 Government Assessments. In addition to the Annual Assessments, Special Assessments, Corrective Assessments, and Benefitted Assessments, the Association shall levy such additional Assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Streets, other Common Areas, or Limited Common Areas from the activities of a governing entity or similar entity in maintaining, repairing, or replacing the entity's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the name of the entity up to and including the meters for individual Lots, and that they are installed and shall be maintained to the entity's specifications.

6.8 Reinvestment Fee Assessments. In addition to all other Assessments which may be levied pursuant to the Governing Documents, upon the transfer of a Lot there shall be one (1) Reinvestment Fee Assessment charged to the buyer or seller, as the buyer and seller may

determine. For purposes of this Section, a “transfer” is any change in the ownership of the Lot as reflected in the office of the County Recorder, regardless of whether or not such change of ownership is pursuant to the sale of a Lot, unless the change of ownership satisfies one of the exceptions set forth in Section 6.8(c). The amount of the Reinvestment Fee Assessment shall be in the amount or percentage determined pursuant to a resolution of the Board, which may be comprised of one or more of the following charges:

- (a) An Assessment charged for:
  - (i) common planning, facilities, and infrastructure;
  - (ii) obligations arising from an environmental covenant;
  - (iii) community programming;
  - (iv) open space;
  - (v) recreational facilities and amenities;
  - (vi) charitable purposes; and/or
  - (vii) Association expenses as provided for in Utah Code § 57-1-46(1)(a).

(b) As provided for in Utah Code § 57-1-46, no Reinvestment Fee Assessment shall exceed one-half percent (0.5%) of the fair market value of the Lot at the time of the transfer, which value includes the value of all Improvements on the Lot. When the seller, or transferor, is a financial institution, the Reinvestment Fee Assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred and Fifty Dollars (\$250.00). The Association may assign the charges, or a portion thereof, collected under this subsection 6.8(b) directly to the Association’s Manager.

(c) A reinvestment fee covenant, may not be enforced upon: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; or (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution.

(d) The Association, and Declarant, is authorized to record any notice required by law to effectuate the assessment and collection of the Reinvestment Fee Assessment. The Board further has the authority to enact Rules and Regulations which may include: (i) requirements for Owners to provide sales and transfer documents; (ii) requirements for the timing of the Owner providing responses to the Association’s requests; (iii) provisions allowing the Association to select an appraiser to value the Lot; and (4) other procedural requirements and Rules as the Board deems appropriate to effectuate the provisions of this Section 6.8 in a prompt and reasonable manner.

6.9 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to Sections 6.2, 6.3, 6.4(a), and 6.4(b) of this Declaration shall be assessed equally and uniformly against all Owners and their Lots.

6.10 Date of Commencement of Annual Assessments. Annual Assessments shall commence on all Lots on the first day of the first calendar month following the first close of escrow for the sale of a Lot in the Properties. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year. Written notice of any change in the amount of any Annual Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The Association shall, upon demand, and for a

reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments against a Lot is binding upon the Association as of the date of its issuance.

6.11 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All portions of the Properties dedicated to and accepted by a local public authority; and
- (b) The Common Area owned by the Association.

6.12 Municipal Tax Collection. It is recognized that under this Declaration the Association will own the Common Area for which property taxes may arise. It is further recognized that each Owner of a Lot is a Member of the Association and as part of the Owner's Assessment will be required to pay to the Association the Owner's pro-rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, the local municipal tax assessor shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the property tax levied on each Lot. To the extent allowable, local municipal tax assessor is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

6.13 Notice of Members Meetings; Quorum Requirements. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4(b) shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast at least fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any called meeting, another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. The process of calling subsequent meetings may continue until a quorum is reached, and the quorum requirement will continue to be reduced as provided for above at each subsequent meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.14 Preparation of Budget. At least annually the Board shall prepare and adopt a Budget for the Association and the Board shall present the Budget at a meeting of the Members. A Budget presented by the Board is only disapproved if Member action to disapprove the Budget is taken in accordance with the limitations under Section 215 of the Act.

6.15 Reserve Fund, Reserve Analysis. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic Assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners

a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent.

Reserve fund money means money to cover: (a) the cost of repairing, replacing, or restoring Common Areas and facilities that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the general budget or other funds of the Association; or (b) a shortfall in the general budget, if: (i) the shortfall occurs while a state of emergency, declared in accordance with Utah Code § 53-2a-206, is in effect; (ii) the geographic area for which the state of emergency is declared extends to the entire state; and (iii) at the time the money is spent, more than ten percent (10%) of the Owners that are not Board Members are delinquent in the payment of assessments as a result of events giving rise to the state of emergency.

The Board may not use reserve fund money for any purpose other than the purpose for which the reserve fund was established, including daily maintenance expenses, unless a majority of Owners vote to approve the use of reserve fund money for that purpose.

The Association shall maintain a reserve fund separate from other Association funds.

6.16 Initial Capital Contribution by Initial Lot Owner. Each initial Owner of a Lot purchased from the Declarant, or its successor or assigned, shall make an initial contribution of Two Hundred Dollars (\$200.00), which will be collected by at the time of closing on the initial sale of the Lot. Such amounts paid shall not be deemed to be advance payments of the Annual Assessment or partial payments of the Reinvestment Fee Assessment, but such initial contribution shall be in addition to the Annual Assessment and Reinvestment Fee Assessment. The Board may apply such funds to cover any deficit in operating expenses or to the reserves.

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

6.18 Application of Payments. Unless otherwise established by the Board in the Rules and Regulations, all payments for Assessments shall be applied to the oldest charges first. Owners have no right to direct the Association on how an Owner's payments should be applied on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

6.19 No Administration of Assessment Funds, Application of Excess Assessments. The Association shall keep all Assessment-generated funds in an account, or accounts, in the name of the Association. The Association shall not commingle Assessment-generated funds with the personal funds of any other Person. In the event the amount budgeted to meet Common Expenses for a particular Fiscal Year proves to be in excess of the actual Common Expenses, the Board, in its discretion, may apply the excess amounts to reserves, credit the excess against future Assessments, or refund the excess to the Owners on a pro-rata basis each Owner's share in the Common Expenses of the Project. The decision of the Board shall be binding and conclusive. In

addition, the Association shall not be obligated to reduce the amount of Annual Assessments in succeeding years if an excess exists for a prior year.

**ARTICLE VII**  
**NONPAYMENT OF ASSESSMENTS; REMEDIES**

7.1 Nonpayment of Assessments; Interest, Late Fees, and Other Remedies. Pursuant to Utah Code § 57-8a-301, *et seq.*, any Assessment installment payment not paid when due shall – together with the hereinafter provided for interest and costs of collection and other amounts provided for in the Act – be, constitute, and remain a continuing lien on the Lot provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date any such installment payment on Assessments become due. If any installment payment to the Assessment is not paid within ten (10) days of when it is due, then a late payment service charge may be assessed against the Owner’s account in the amount of Twenty-Five Dollars (\$25.00) or such greater amount as set by the Board. If any installment payment to the Association is not paid within thirty (30) days after the date on which it becomes due, the amount thereof and any other prior Assessments and charges on the Owner’s account shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month, compounded monthly. If a monthly installment payment is not timely made, the Board may declare the entire Annual Assessment in default and accelerate the Annual Assessment and declare the entire amount of the Annual Assessment immediately due and owing. The Association may, in its discretion, further bring an action against the Owner for a money judgment and/or to foreclose the lien against the Lot, judicially or non-judicially. The Association may pursue a lawsuit for a money judgment against the Owner without waiving the Association’s right to pursue any claim to enforce its lien against the Lot. Such remedies shall be cumulative and not exclusive. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

7.2 Lien. The Association’s lien on the Lot arises pursuant to the Act and this Declaration. The Association may, but need not, file a notice of lien claim on a Lot. If the Board elects to file a claim of lien against the Lot of the Delinquent Owner by Recording a notice (“Notice of Lien”), then such Notice of Lien shall set forth: (a) the amount of the claim or delinquency; (b) the interest and costs of collections which have accrued thereon; (c) the legal description of the Lot against which the lien is claimed; and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and Assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the Notice of Lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law, including without limitation, a deed of trust as set forth in this Declaration. The Manager or Board may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot that is subject to the Assessment lien.

7.3 Trust Deed for Assessments; Appointment of Trustee. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot and appurtenant Limited Common Area, and all Improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code § 57-1-19 *et seq.*, as amended from time to time. The Association and each Lot Owner hereby conveys and warrants pursuant to Sections 212 and 302 of the Act, and Utah Code § 57-1-20, to attorney Quinn A. Sperry, or any other attorney that the Association engages to act on its behalf to substitute for Quinn A. Sperry, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration. The Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the County Recorder.

7.4 Perfection of Lien and Priority. The Association's lien arises and is perfected as of the date of the recording of the initial Declaration for the Development and has priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. Pursuant to the Act, the Association's lien has priority over each other lien and encumbrance on a Lot, recorded or unrecorded, except:

- (a) tax and special assessment liens on the Lot in favor of any assessing entity or special improvement district; and
- (b) encumbrances on the interest of the Lot Owner:
  - (i) recorded prior to the date of the recording of the initial Declaration for the Development;
  - (ii) a first or second security interest on the Lot secured by a Mortgage or Trust Deed which is recorded before the Association's Notice of Lien by or on behalf of the Association; and
  - (iii) that by law would be a lien prior to subsequently recorded encumbrances.

Pursuant to Utah Code § 57-8a-301(5), the Assessment lien against a Lot is not subject to an Owner's homestead exemption.

7.5 Discontinuance of Common Utility Service and Suspension of Common Facility Use. As used in this section, "Delinquent Owner" means a Lot Owner who fails to pay an Assessment when due. As provided for in the Act, the Board may terminate a Delinquent Owner's right to: receive a utility service for which the Member pays as a common expense, and access and use the Association's recreational facilities. Before terminating utility services or right of access and use of recreational facilities, the Manager or Board shall give a written Notice of Noncompliance by the Board and Right to Hearing to the Delinquent Owner. This Notice of Noncompliance by the Board and Right to Hearing shall state, at a minimum: (a) that the Association will terminate the Owner's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the Assessment within thirty (30) days; (b) the amount of the Assessment due, including any interest and late payment fee; and (iii) that the Delinquent Owner has the right to request a hearing with the Board, as provided for in this Section. The Notice of Noncompliance by the Board and Right to Hearing may further include the estimated cost to reinstate a utility service if service is terminated.

(a) After receiving the Notice of Noncompliance by the Board and Right to Hearing, the Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the Assessment and the proposed action by the Association. A Delinquent Owner's request under this subsection shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the Notice of Noncompliance by the Board and Right to Hearing.

(b) Upon receiving a hearing request from the Delinquent Owner, the Board shall conduct an informal hearing in accordance with the hearing procedures of the Association.

(c) If the Delinquent Owner requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board: (i) conducts the hearing; and (ii) enters a final decision and sends the Delinquent Owner a Notice of Board Adjudication.

(d) If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Owner's payment of the Assessment, including any interest and late payment fee.

(e) The Association may: (i) levy an Assessment against the Delinquent Owner for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and (ii) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a Notice of Noncompliance by the Board and Right to Hearing.

7.6 Tenant Payment. The Board may require a tenant under a lease with a Lot Owner to pay the Association all future lease payments due to the Lot Owner if the Lot Owner fails to pay an Assessment for a period of more than sixty (60) days after the Assessment is due and payable, beginning with the next monthly or periodic payment due from the tenant and until the Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's Manager or Board shall give the Lot Owner notice, which notice shall state: (i) the amount of the Assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other Assessments which become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot Owner's tenant if the Lot Owner does not pay the amount owing within fifteen (15) days.

If a Lot Owner fails to pay the amount owing within fifteen (15) days after the Association's Manager or Board gives the Lot Owner notice, the Association's Manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot Owner's failure to pay an Assessment within the required time, the Board has notified the Lot Owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the 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; and (iii) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot Owner. The Manager or Board shall mail a copy of this notice to the Lot Owner.

A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Lot Owner: (i) beginning with the next monthly or other periodic

payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant that the amount owing by the Lot Owner is paid. A Lot Owner shall credit each payment that the tenant makes to the Association under this Section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner. Owner may not initiate a suit or other action against a tenant for failure to make a lease payment when the tenant pays the lease payment to the Association as required under this Section.

Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Lot Owner. The Association shall deposit money paid to the Association under this Section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed twenty-five Dollars (\$25.00), is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot Owner any remaining balance.

7.7 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot may pay any unpaid Assessment due with respect to the Lot. Upon such payment, the encumbrancer has a lien on the Lot for the amounts paid.

7.8 Cumulative Remedies. The Assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

7.9 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to this Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.10 Rent After Foreclosure. In the event the Association takes title to a Lot through foreclosure, the Board may elect to allow the Occupant to remain in the Dwelling Unit and the Occupant shall be required to pay a reasonable rental amount to the Association for use of the Dwelling Unit and Lot.

7.11 Association Responsibility after Foreclosure. If the Association takes title to a Lot through foreclosure, the Association shall not be bound by the provisions related to the Lot which otherwise apply to any other Lot Owner, including, but not limited to, obligations to pay Assessments, pay property taxes on the Lot, or maintain Lot and its Dwelling Unit.

## **ARTICLE VIII** **ARCHITECTURAL CONTROL**

8.1 Members of Committee. The ACC shall consist of three (3) to five (5) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association. If the ACC is not



appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members. The Board or ACC may delegate some or all of its duties and responsibilities to the Manager.

8.2 ACC General Powers. The ACC may promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Properties. This power shall include the power to issue ACC Restrictions and Rules which, among other provisions, may set forth procedures for the submission of Plans for approval, and state additional factors which it will take into consideration in reviewing submissions. The Declarant may adopt the initial ACC Restrictions and Rules, and any amendments thereto during the Declarant Control Period (as defined in Article XV). ACC Restrictions and Rules do not need to be Recorded.

8.3 Submission and Review of Plans and Specifications. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, on the Properties shall be commenced or maintained by an Owner, until the Plans and Specifications therefore showing the nature, kind, shape, height, width, color, materials, and location of the same shall have been submitted by the Owner, or the Owner's agent, to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the ACC. The ACC shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the Community-Wide Standard, the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

The Association may charge a plan fee that is equivalent to the cost of reviewing and approving the Plans, which cost may include, but is not limited to, the Association paying an engineer, architect, or other professional to review the Plans.

The ACC may condition its approval of any Improvement upon such changes, alterations, or modifications of such Improvement as it deems appropriate and may require submission of additional Plans and Specifications or other information prior to approving or disapproving material submitted. Such conditions may also include a requirement that the applicant complete the proposed Improvement within a stated period of time. The ACC may require such detail in the Plans and Specifications submitted for its review as it deems proper, including, without limitation: (i) landscape plans; (ii) floor plans; (iii) site plans and exterior lighting plans as they relate to exterior appearance of the Dwelling Unit and any other Improvement on the Lot; (iv) interior lighting plans to the extent they relate to exterior illumination of the Dwelling Unit; (v) drainage plans; (vi) any relevant geo-technical reports; (vii) elevation drawings; and (viii) description or samples of exterior material and colors. Decisions of the ACC shall be transmitted by the ACC to

the applicant at the address set forth in the application for approval, after receipt by the ACC of all materials required by the ACC and within thirty (30) days after its next duly scheduled meeting at which there is a quorum in attendance. Unless written approval is transmitted by the ACC (or the Board or Manager) to the applicant within the time herein set, any application submitted pursuant to this Section 8.3 shall be deemed denied. In addition to complying with the ACC Restrictions and Rules, the Applicant shall meet any governmental review or permit requirements prior to making any alterations or engaging in construction, reconstruction or remodeling permitted hereunder.

8.4 Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the ACC members at any meeting shall constitute a quorum.

8.5 No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted to the ACC for approval or consent.

8.6 Compensation of ACC Members. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

8.7 Inspection of Work and Costs of Correction. Inspection of work and correction of defects therein shall proceed as follows:

(a) The ACC or its duly authorized representative may inspect during reasonable daylight hours, any work for which approval of Plans is required under this Article VIII. However, the ACC's right of inspection of Improvements for which Plans have been submitted and approved shall terminate sixty (60) days after the Improvement has been completed, as evidenced in the case of a Dwelling Unit by a certificate of occupancy issued by the requisite governmental authority, and the respective Owner has given written notice to the ACC of its completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if Plans for the Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that the Improvement was constructed without obtaining approval of the Plans therefor or was not done in substantial compliance with the Plans approved by the ACC, it shall deliver to the Owner a Notice of Noncompliance by the ACC within five (5) days from the inspection. The ACC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of ten (10) days from the date of delivery of the Notice of Noncompliance by the ACC as provided for above, the Owner has failed to remedy the noncompliance, the ACC shall notify the Board in writing of such failure. The Board shall then deliver to such Owner a Notice of Noncompliance by the Board and Right to Hearing. At a hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from delivery of Notice of Board Adjudication to the Owner. If the Owner does not comply with the Board determination within that period, the Board may commence a lawsuit for

damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees and costs) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board may levy a Corrective Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(c) If for any reason the ACC fails to notify the Owner of any noncompliance with previously submitted and approved Plans within thirty (30) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved Plans.

8.8 Scope of Review. The ACC shall review and approve, conditionally approve, or disapprove all Plans submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar architectural features, all as may be required by any ACC standards and the ACC Restrictions and Rules. The ACC's approval or disapproval shall be based solely on the considerations set forth in this Article VIII, and the ACC shall not be responsible for reviewing, nor shall its approval of any Plan or design be deemed approval of, any Plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental requirements with respect to the implementation of such Plans.

8.9 Limitation on Liability. Neither the ACC, the Board, Declarant, nor any member thereof, acting in good faith shall be liable to the Association or to any Owner or Person for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests; (ii) the construction or performance of any work, whether or not pursuant to approved Plans; (iii) the development or manner of development of any of the Properties; or (iv) any engineering or other defect in approved Plans, drawings and specifications.

8.10 Declarant's Exemption. The Declarant is not required to submit Plans to the ACC or otherwise comply with the provisions of this Article in the initial construction of the Properties.

## **ARTICLE IX**

### **MAINTENANCE AND REPAIR OBLIGATIONS**

9.1 Maintenance Obligations of Owners. Each Owner is responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of the following:

- (a) All interior and exterior doors, including thresholds, door jambs, hinges, doorbells, chimes, handles, and locks.
- (b) All interior paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls.

(c) All drywall, wallboard, or similarly functioning materials within the Dwelling Unit.

(d) All framing, insulation, and other materials associated with the Dwelling Unit's interior nonbearing walls.

(e) All windows, windowsills (including the regular cleaning and clearing of clogged weep holes), window screens, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass (the Association may elect to arrange and pay for the cleaning of all exterior windows as a Common Expense, may require the Owners to pay a particular person or company to clean on a schedule determined by the Association, or may arrange for cleaning of windows and pass through the specific expenses associated with each particular Dwelling Unit as a Benefitted Assessment).

(f) The paint and any other decorative finish inside the opening to any skylight.

(g) All sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within an Owner's Dwelling Unit and to the extent that they extend outside the boundaries of the Lot but serve only the Owner's Lot or Dwelling Unit.

(h) Any of the following wherever they might be located (inside or outside of the Dwelling Unit) which serve an Owner's Lot exclusively: lighting fixtures (including lighting particular to a porch, patio, driveway, or fenced-in area but not including exterior lighting attached to a Dwelling Unit for the purpose of lighting any Common Area outside of those aforementioned areas), fans, plumbing fixtures including plumbing pipes and lines, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, wiring to such units, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations.

(i) All plywood decking and similar materials on interior floors.

(j) Concrete pads for the Dwelling Unit's garage and within Dwelling Unit (but excluding the Dwelling Unit's foundation).

(k) Garage doors and related garage door openers for the Dwelling Unit.

(l) All Limited Common Area elements appurtenant to the Lot, including, without limitation, the patio, deck, driveways, curbs, gutters, sidewalks, including any stairs and railings related thereto, but the Association may adopt Rules regulating the color, style, materials, and height for any railings.

(m) All other parts of the Dwelling Unit, Improvements on the Lot, and fixtures and equipment located within the boundaries of the Lot, unless expressly designated in this Declaration to be maintained by the Association.

(n) Any modifications or repairs to the Dwelling Unit as necessary to mitigate any radon gas or other naturally occurring environmental contaminate.

(o) Snow removal from the areas with the Lot and any Limited Common Area appurtenant to the Lot; provided that, the Association may offer and perform such snow removal services within the Lot and Limited Common Areas on behalf of the Owner and charge the Owner a Benefitted Assessment for such service.

(p) All landscaping, trees, and other plants and the sprinkler system in the fenced-in Limited Common Area appurtenant to the Lot.

(q) Fences surrounding any Limited Common Area associated with the Owner's Lot. Fences shall be maintained as required by the Association in the Rules. For any fences along the boundary of the fenced-in Limited Common Areas for two or more Lot, the Owners of the Lot sharing the fence shall equally share the cost of maintaining, repairing, and replacing the fence in the same manner as the costs are shared for a party wall, as set forth in this Declaration.

Each Owner shall also keep the interior of the Dwelling Unit, and all porches, patios, decks, fenced-in areas, and other Limited Common Areas and exterior areas of a Dwelling Unit associated with an Owner's Lot in a clean and sanitary condition, free of pests and rodents, uncluttered, and in a general state of good repair. The Board may set forth in the Rules and Regulations any limitations, restrictions, or guidelines on what may or may not be left, stored, or installed, or placed on any Lot, which may include a prohibition on leaving, installing, or storing any items or animals in such places. If any Owner shall permit the Dwelling Unit, Lot, or any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly, or unattractive or to otherwise violate this Declaration and the Owner fails to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right to seek any remedies at law or in equity which it may have. Such remedies include, but are not limited to, the Association's right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Lot and Dwelling Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligations to correct or eliminate any such condition or state of disrepair. All such costs incurred by the Association shall be collected by the Association as a Corrective Assessment.

In addition, the Board shall have the right, but not the duty, to enter upon such Owner's Lot and Dwelling Unit to perform such emergency and non-emergency repairs or maintenance as the Board deems appropriate and to charge the cost thereof to the Owner. Said cost shall be a Corrective Assessment enforceable as set forth in this Declaration. For non-emergency repairs or maintenance, the Owner shall be entitled to Notice of Noncompliance by the Board and Right to Hearing. Owner's may assign certain of their maintenance obligations to the Association under written contract pursuant to a menu of services which may be offered by the Association under the provisions of this Declaration relating to Benefitted Assessments.

9.2 Maintenance Obligations of Association. No improvement, excavation, or work which in any way alters the Common Area shall be made or done by any Person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereon by Declarant. Unless such maintenance obligations are otherwise assigned to the Owners, the Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the following:

- (a) All foundations (but excluding including concrete pads within a Dwelling Unit and Dwelling Unit's garage).
- (b) All framing and structural components in ceilings and floors (not including concrete pads or plywood decking).
- (c) All framing, structural components, and insulation in exterior and bearing walls.

(d) Except as otherwise provided herein, all framing, structural components, and insulation located exterior to any drywall or similar materials on the interior of the Dwelling Unit.

(e) The outside exterior surfaces of the Dwelling Unit structures and all components that are a part of the outside surface of all exterior walls and outside surfaces of the Dwelling Units, except as otherwise specifically assigned in this Declaration to the Owner for maintenance and repair.

(f) The framing, structural components, and insulation in any party walls common to two (2) Dwelling Units.

(g) Except for the obligations assigned to Owners in Sections 9.1 concerning porches, patios, and exterior areas of a Dwelling Unit, any patios, porches, decks, and stairways on the exterior of any dwelling and any railings associated therewith.

(h) The roofs, rain gutters, and window wells.

(i) All utility lines and plumbing lines to the extent that they serve more than one (1) Lot or Dwelling Unit.

(j) Except for the obligations assigned to the Owners in Section 9.1, the sidewalks, parking areas, and private Streets in the Common Area of the Project, including snow removal therefrom.

(k) Sprinkler lines and related equipment in the Common Area, except for any such lines and equipment located within a fenced-in Limited Common Area.

(l) Except for the obligations assigned to the Owners in Section 9.1(p), landscaping, trees, and plants in the Common Area and Limited Common Areas.

(m) Any retaining walls located in the Common Area.

(n) Fences along the perimeter boundary of the Project.

(o) All other Common Area open space and equipment.

In the case of common utility lines shared by at least two or more Lots or Dwelling Units, such obligations for maintenance and repair shall be completed by the Association, unless, it is established that the damage or disrepair was the result of an intentional or negligent act of only one Owner or a Person for whom the Owner is responsible, in which case such Owner shall be entirely responsible for the costs of the repairs and any other amounts incurred by the Association to repair the damaged area and utility lines, which amounts may be assessed to the Owner as a Corrective Assessment.

The Board, or its authorized representative, after giving not less than twenty-four (24) hours advance notice posted to the Lot, may access a Lot, including the Dwelling Unit, from time to time during reasonable hours, as necessary for maintenance, repair, or replacement of any of the Common Areas. If repair to a Lot, Dwelling Unit or Common Area – that if not made in a timely manner – will likely result in immediate and substantial damage to a Common Area or another Lot or Dwelling Unit, then the Board may enter the Lot or the Dwelling Unit to make the emergency repair upon such notice as is reasonable under the circumstances.

9.3 Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party to fulfill the Association's responsibility to removal snow within the Project's Common Area as required under Section 9.2. Pursuant to Section 9.1, the Owners are responsible for removing snow from those areas within the Owner's Lot and the Limited Common Area appurtenant to the Lot. Notwithstanding the foregoing, the Association shall remove the snow from the Owner's Lot and the appurtenant Limited Common Area if the Owner accepts the Association offer to complete such snow removal obligation and charge the benefitted Owner a Benefitted Assessment. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation on the Owner's Lot and appurtenant Limited Common Area. When the work of removing snow is delegated by the Association to a third party, this third party may utilize certain discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Association shall not be responsible or liable for said third party's removal of snow.

9.4 Damage to Dwelling Units - Reconstruction. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either: (i) rebuild, repair or reconstruct the Lot and the Dwelling Unit on such Lot in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ACC; or (ii) restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit and the ACC shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond the Owner's reasonable control. A transferee of title to the Lot which is damaged, or upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction of the Dwelling Unit or restoration of the Lot in less than thirty (30) days from the date such transferee acquired title to the Lot.

9.5 Access at Reasonable Hours. Except as otherwise provided for in this Article IX, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours for the purpose of performing the maintenance required by this Article.

9.6 Alteration of Certain Maintenance Duties by Rules. The duty of maintenance for the area of a Lot outside the walls of the Dwelling Units, and the area adjacent and appurtenant to the Dwelling Units and which constitutes or is treated as Limited Common Area for maintenance purposes may be altered by the Rules and Regulations of the Association.

9.7 Party Walls. Each wall or fence which is built and placed on the dividing line between the Lots or Limited Common Areas shall constitute a "party wall." To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such

use. Owners acknowledge that certain repairs or maintenance to Dwellings with a party wall may become necessary, which repairs or maintenance may not be able to be formed on one Dwelling only, and in such instance the Owner of the Dwelling which required the repair or maintenance will be responsible from the total cost of the repair or maintenance to the party wall. Any utilities (including without limitation water, power, and sewer) within or under the party wall and principally serving only one Dwelling Unit shall be the responsibility of that Dwelling Unit's Owner, including without limitation all costs of maintenance, repair, and replacement. Any damage resulting from or associated with the utilities principally serving a particular Dwelling Unit shall be the responsibility of the Owner thereof. The Association, through the Board, has the right, but not the obligation, to make repairs associated with or caused by such utility services, and the Association may levy a Corrective Assessment for the cost of the repairs against the Dwelling Unit of the responsible Owner. Further, if the Association's insurance provides any coverage for the damage, the responsible Owner shall pay the deductible and, if such Owner fails to pay the deductible, the Association may also levy a Corrective Assessment against the Owner's Dwelling Unit for the amount of the deductible.

(b) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Weatherproofing. Notwithstanding any other provision of this Declaration, an Owner who by the Owner's negligent or willful act causes the party wall to be exposed to the elements and damaged thereby shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(e) Arbitration and Mediation. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, the parties to the dispute shall engage in formal or informal arbitration or mediation. Each party to the dispute shall choose one arbitrator or mediator, and such arbitrators or mediators shall choose one additional arbitrator or mediator, respectively, and the decision shall be by a majority of all the arbitrators or mediators. Should any party refuse to appoint an arbitrator or mediator within ten (10) days after written request to do so, the Board of the Association shall select an arbitrator or mediator for the refusing party.

(f) Boundary Line. For any party wall shared by two Dwelling Units, the boundary line for the Dwelling Units shall be the center line of the party wall.



**ARTICLE X**  
**USE RESTRICTIONS**

All real property within the Properties shall be held, used, and enjoyed subject to such limitations and restrictions set forth below.

10.1 Residential Use. Each Dwelling Unit shall be used as a residence.

10.2 Accountability of Members. As more fully provided in Article XI(d), each Member shall be liable to the Association for any damage to the Common Area sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of the Owner's respective family and guests, both minor and adult.

10.3 Business or Commercial Activity. Subject to the following exceptions, no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Declarant, its successors and assigns, may use any portion of the Properties for a model home site, display and sales office in connection with the sale of Lots on the Properties by Declarant. Upon written consent from the Board, which consent may contain reasonable restrictions, occupations without external evidence thereof – including without limitation, traffic generation which are merely incidental to the use of the Dwelling Unit as a residential home – are permitted for so long as such occupations are conducted in conformance with all applicable governmental ordinances.

10.4 Signs. Except for one professional quality "For Rent" or "For Sale" sign of not more than four (4) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot. Such sign may be placed on the Limited Common Areas. The foregoing restrictions shall not apply to the commercial activities, signs, and billboards, if any, of the Declarant or its agents during the construction and sales period of the Development or by the Association in furtherance of its powers and purposes set forth hereinafter and in the Governing Documents, as the same may be amended from time to time.

10.5 Quiet Enjoyment, Nuisance. No noxious or offensive activity or noise shall be carried on upon any part of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance. No Owner or Occupant shall engage in any activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

10.6 Notice of Noise Hazard. Notwithstanding Section 10.5, above, each Owner, by acceptance of a deed to a Lot, acknowledges that the Project is designed to accommodate outdoor living on open and rooftop balconies of the Dwelling Units. Each Owner, by acceptance of a deed to a Lot, further recognizes and assumes the risks inherent with outdoor living and socializing, including the normal noises, sounds, odors and all other aspects associated therewith, and the same shall not be considered a nuisance or impairment to quiet enjoyment of other Owners. Owners, Occupants, and their guests must still comply with any noise ordinance of the local municipality.

10.7 Parking and Vehicular Restrictions. As set forth in Section 2.5, the Association may adopt Rules and Regulations relating to the parking of Vehicles and Recreational Vehicles within the Project including, without limitation: (1) the right to remove or cause to be removed any vehicles that are improperly parked; (2) restrictions on the type and condition of Vehicles in any customary or temporary parking; (3) restrictions for parking on the Streets in the Project; (4) restrictions on the time period and duration of temporary parking; and (5) the levying of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. Unless otherwise permitted by the Association in the Rules and Regulations, the following restrictions apply to parking and Vehicles:

(a) Parking:

- (i) Each Owner shall maintain the Owner's garage in a manner which ensures that it is capable of accommodating at least one (1) Vehicle. All garage doors must remain closed, except when necessary for ingress or egress.
- (ii) There shall be no parking on the Project's Streets, except Owners, Occupants, and their guests may temporarily park on the Streets for the purpose of loading and unloading only and in no case overnight.
- (iii) Guest parking shall be accommodated for on the driveway on the Lot and in any parking stalls, or designated parking areas, located in the Common Area.

(b) Vehicle Maintenance. Repair and restoration of a Vehicle or Recreational Vehicle is permitted only within an Owner's garage when the garage door is closed, provided that such activity may be prohibited entirely if the Board determines, in its discretion, that such activity constitutes a nuisance due to noise, odor, or other reasons. Owners may, on their driveways, wash the exteriors of any Vehicle or Recreational Vehicle, provided that any debris from the washing is promptly removed. No Person shall conduct any other repairs or restorations of any Vehicle or Recreational Vehicle upon any portion of the Properties, except as specifically provided in this subparagraph (b).

10.8 Animals. All animals are subject to the Rules and Regulations adopted by the Board. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said Lots, except that dogs, cats, birds, or other household pets, two or less in total number, may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Properties which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within an enclosed area of the Lot (such enclosure being approved by the ACC in advance) or on a leash attended to by a person when in the Common Areas. Such pets may not be kept in the Common Areas unless attended to at all times by a Person. All dogs must be kept on leash while in the Common Area. All pet waste must be immediately cleaned up. This Section may be made more restrictive by Rule of the Association.

10.9 Insurance and Governmental Requirements. No Owner shall permit or cause anything to be done or kept on the Properties, or on any Street visible from the Properties, which may increase the rate of insurance on the Properties, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the

local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit.

10.10 Construction. Any re-construction of Dwelling Units or other Improvements by Owners shall be diligently pursued to substantial completion which generally shall occur within nine (9) months of commencement, subject to extensions by the ACC in its sole discretion. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or the Owner's contractor.

10.11 Temporary Buildings and Structures. No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Properties either temporarily or permanently.

10.12 Blasting and Drilling. Blasting in the Project is prohibited. Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Properties, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat, or natural gas shall be erected, maintained, or permitted on the Properties. The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot.

10.13 No Further Subdivision or Timeshare of Lots; Lease Provisions; Accessory Dwelling Unit. No Lot shall be further subdivided, partitioned, split, separated, or timeshared (whether as a timeshare estate or for timeshare uses) into two or more Lots or Dwelling Units. No subdivision Plat or covenants, conditions, or restrictions related to any singular Lot or the Project shall be Recorded unless the Board and Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions Recorded in violation of this Section shall be null, void, and of no legal effect. The provisions of this Section do not prohibit an Owner from: (a) renting or leasing the Owner's entire Lot to a single housekeeping unit by means of a written lease or rental agreement; (b) selling the Owner's Lot; or (3) transferring or selling any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety, or some other form of joint ownership; however, the provisions of this Section do impose certain restrictions on leasing.

Any lease of a Lot (and Dwelling Unit) shall be for an initial term of at least six months. Daily, nightly, weekly, monthly, and other short-term occupation of a Lot (or Dwelling Unit) is prohibited (whether pay or not), and Dwelling Units shall not be advertised or listed for short-term rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip, or any other similar local, national, or international providers.

The terms of any such lease or rental agreement shall be made expressly subject to this Declaration and other Governing Documents of the Association. Any failure by the Occupant of such Lot or Dwelling Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement.

10.14 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Properties, unless an adequate alternative provision is made for proper drainage – including without limitation, removal of excess water to gutters in the Streets and roadways, preventing excess water from traveling onto adjacent Lots and Common Area. For the purposes hereof, “established drainage pattern” is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant and shall include drainage from the Lots onto the Common Area. Declarant shall be held harmless from and against any causes of action related to an alteration in the “established drainage pattern.”

10.15 Water Supply and Sewage Disposal Systems. No individual water supply or sewage disposal system shall be permitted on any Lot on the Properties unless such system is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Properties, the local Health Department, and all other applicable governmental authorities.

10.16 Trash Receptacles. Owners shall keep their personal trash receptacles in the garage or otherwise screened from view of the Street, except when placing the receptacles at the curb for pick up. The Board may pass additional Rules and Regulations governing trash receptacles.

10.17 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

10.18 Planting, Gardening, Fences. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon any Limited Common Area appurtenant to a Lot except such as are installed in accordance with the initial construction of the Lots located thereon or as approved by the ACC. If the Board allows Owners to install fences, the Board may adopt Rules regulating the location, style, height, color, and other characteristics of such allowed fences, and fences may only be installed after being approved by the ACC. The Board shall adopt rules supporting water-efficient landscaping, including allowance for low water use on lawns during drought conditions, and may not prohibit or restrict the conversion of a grass park strip to water-efficient landscaping

10.19 External Apparatus and Fixtures. To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, canopies or other outdoor covers, shutters, ornamental screens, screen doors, patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of Dwelling Unit, shall be constructed, erected, or maintained on the Project without the prior written approval of the ACC. Notwithstanding the foregoing, an Owner may, at the Owner’s own expense, install external fixtures related to solar energy systems, provided that the ACC or Board approves the location of any such external fixture and any application for a solar energy system complies with the requirements and limitations set forth in Sections 701 through 703 of the Act, any ACC Restrictions adopted by the ACC, and Rules or Rules and Regulations adopted by the Board related to solar energy systems and such external fixtures. As used in this Section, the term “solar energy system” is as defined in Section 102(22) of the Act.

10.20 Electronic Vehicle Charging. Electronic vehicle charging systems within the Project are governed by Section 802 of the Act. The Association may not prohibit an Owner from

installing or using a charging system in: (1) a parking space: (i) on the Owner's Lot; and (ii) used for the parking or storage of a vehicle or equipment; or (2) a Limited Common Area parking space designated for the Owner's exclusive use. However, the Association may: (a) require an Owner to submit an application for approval of the installation of a charging system to the Board; (b) require the Owner to agree in writing to: (i) hire a general electrical contractor or residential electrical contractor to install the charging system; or (ii) if a charging system is installed in a Common Area, provide reimbursement to the Association for the actual cost of the increase in the Association's insurance premium attributable to the installation or use of the charging system; (c) require a charging system to comply with: (i) the Association's reasonable design criteria governing the dimensions, placement, or external appearance of the charging system; or (ii) applicable building codes; (d) impose a reasonable charge to cover costs associated with the review and permitting of a charging station; (e) impose a reasonable restriction on the installation and use of a charging station that does not significantly: (i) increase the cost of the charging station; or (ii) decrease the efficiency or performance of the charging station; or (f) require a lot owner to pay the costs associated with installation, metering, and use of the charging station, including the cost of: (i) electricity associated with the charging station; and (ii) damage to a Common Area, a Limited Common Area, or an area subject to the exclusive use of another Owner that results from the installation, use, maintenance, repair, removal, or replacement of the charging station. An Owner who installs a charging system shall disclose to a prospective buyer of the Lot: (a) the existence of the charging station and (b) the Owner's related responsibilities under this Section. Unless the Owner and the Association, or the Declarant, otherwise agree: (a) a charging station installed under this Section is the personal property of the Owner of the Lot with which the charging station is associated; and (b) an Owner who installs a charging station shall, before transferring ownership of the Owner's Lot, unless the prospective buyer of the Lot accepts ownership and all rights and responsibilities that apply to the charging station under this Section: (i) remove the charging station; and (ii) restore the premises to the condition before installation of the charging station. As used in this Section, the terms "charging system," "general electrical contractor," and "residential electrical contractor" are as defined in Section 801 of the Act.

10.21 FCC Antenna and Dish Policy. Owners are encouraged to use streaming services or cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas (dishes) one (1) meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the FCC regulated dish is placed in a location screened from view of the streets. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increases the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner. The dish must comply with all applicable city, county and state laws, regulations, and codes. The Association must be provided with a copy of any applicable governmental permits. Installation must be pursuant to the manufacturer's instructions. In order to protect against personal injury and property damage, a dish may not be placed in a location where it may come into contact with a power line. In order to protect against personal injury and property damage, all dishes must be properly grounded and secured. In order to protect against personal injury, dishes may not block or obstruct any driver's view of an intersection or street. The Owner is responsible for all costs associated with the installation and maintenance of a dish. The Owner is responsible for all damage caused by or

connected with the dish. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. An Owner must complete any notification form adopted by the Association and submit a copy of the completed form to the Association within five (5) business days after installing an antenna allowed pursuant to this Declaration. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna. In the event of a violation of this Section, the Association may bring an action for declaratory relief with the FCC or Utah District Court after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a fine to the Association for each violation as set forth in the Association's fine policy. If the violation is not corrected within a reasonable length of time, the Association may levy additional fines for a continuing violation as allowed by the Association's fine policy. If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein.

**ARTICLE XI**  
**DAMAGE AND CONDEMNATION**

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

(b) If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in Section 6.4(b), cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.

(c) To the extent of funds available for restoration, any restoration or repair of such Common Area shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

(d) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of the Owner's respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the

Association's insurance and assign to the Association's insurance company, its claims against the Member who, by the Owner's own acts or the acts (both minor and adult) of the Owner's family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. All such expenses may be levied by the Association as a Corrective Assessment.

(e) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements, or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefore, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

## **ARTICLE XII** **INSURANCE**

The Association shall secure and at all times maintain the insurance coverages set forth in this Article. The Board, in its discretion, may obtain insurance coverages for the Association in addition to those specifically set forth in this Article.

12.1 Fire and Casualty Insurance. A policy, or policies, of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all Improvements comprising a part of the Common Area. The name of the insured under each such policy shall be the Association in form and substance for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

12.2 General Liability Insurance. A comprehensive policy, or policies, insuring the Owners, the Association, and its Board, officers, agents, members of the ACC, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than one million dollars (\$1,000,000.00) for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of an Owner in the Development because of negligent acts of the Association or other Owners.

12.3 Fidelity Insurance. A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent

(100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all Mortgagees of Lots.

12.4 Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Common Area and all buildings and structures, including the Dwelling Units, fixtures, and building service equipment. 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 policy as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Dwelling Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Dwelling 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.

(a) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all other perils normally covered by "special form" property coverage. 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. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (i) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable Property regardless of the cost; or (ii) 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.

(b) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement" (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (iii) "Equipment Breakdown," if the Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of \$1,000,000.00, or the insurable value of the building containing the equipment.

(c) 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 (c)(i) and subject to subsection (c)(iii):



- (1) the Owner is responsible for the Association's policy deductible; and
  - (2) building property coverage, often referred to as coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (iii) (1) As used in this subsection (c)(iii):
- (A) "Covered Loss" means a loss, resulting from a single event or occurrence covered by the Association's property insurance policy;
  - (B) "Unit Damage" means damage to any combination of a Dwelling Unit, Lot, and Limited Common Area appurtenant to a Lot; and
  - (C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.
- (2) An Owner who owns a Lot that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Dwelling Unit to the amount of the deductible under the Association's property insurance policy.
  - (3) If an Owner does not pay the amount required under subsection (c)(ii)(2) within thirty (30) days after substantial completion of the repairs to, as applicable, the Dwelling Unit, Lot, or the Limited Common Area appurtenant to the Lot, the Association may levy a Benefitted Assessment against the Owner for that amount.

(d) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims which are under the Deductible. If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Lot, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area; (iii) an Owner who does not have a policy to cover the damage to that Owner's Lot is responsible for that damage and the Association may, as provided in Section 12.4(c)(iii), recover any payments the Association makes to remediate that Lot; and (iv) the Association need not tender the claim to the Association's insurer.

(f) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 12.4(c) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

12.5 Directors' and Officers' Insurance. The Association may obtain Directors' and Officers' liability insurance protecting the Board, the officers, ACC members, other members of committees of the Board, 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). To the extent reasonably available, the policy should: (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 act or similar 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 Board, the policy may also include coverage for any Manager and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

12.6 Additional Insurance Requirements. The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Project in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(c) The Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: (i) a Waiver of the insurer's subrogation rights with respect to the Association, the Owners, invitees, and tenants; (ii) that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; (iii) that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any Board, officer, Manager, agent or employee of the Association without a prior written demand that the defect be cured; and (iv) that any "no other insurance" clause herein shall not apply with respect to insurance held by the Owners.

(f) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(g) **Mortgagee Clause.** All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(h) **Review of Insurance.** The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

12.7 **Insurance Obligations of Owners.** Each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may elect to take advantage of discounts and/or improved coverage that may be afforded by a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Dwelling Units on the Lots with a co-insurance clause and each owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the Assessment for such Lot. In this event the insurance cost may be specifically charged to those Lots with Dwelling Units built upon them.

12.8 **Unacceptable Policies.** Policies are unacceptable where: (a) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (b) by, the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee, or Mortgagee's designee from collecting insurance proceeds.

12.9 **Association and Owner Flood Insurance.** In the event that a portion of the Development should be declared to be in a flood area, a blanket policy of flood insurance for that portion of the Common Area located in the flood area shall be maintained by the Association in an amount equal to the full cost of replacement of the Common Area within the flood area. Each Owner of a Lot located within the 100-year flood plain, if any, shall acquire and maintain in effect flood insurance for the full replacement cost of the Dwelling Unit, the Lot and all Improvements thereon, unless such Owner elects not to obtain flood insurance and signs a "Waiver and Acknowledgment" of such election on a form prepared by and acceptable to the attorney for the local municipality prior to issuance of a certificate of occupancy. The Waiver and Acknowledgment shall be binding upon all heirs, successors and assigns of the Owner signing

such Waiver and Acknowledgment. All Dwelling Units and buildings within the 100-year flood plain must have an elevation certificate, prepared by a license professional, verifying the finished floor elevation prior to issuance of a building permit. Said certificate's elevation shall be verified by the licensed professional before a certificate of occupancy is obtained. It is recommended that all Owners in the Development obtain flood insurance, even if their Lot is not located within the 100-year flood plain.

**ARTICLE XIII**  
**MORTGAGEE PROTECTION CLAUSE**

Notwithstanding any other provision of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

13.1 Preservation of Regulatory Structure and Insurance. Unless the holders of sixty-seven percent (67%) of all first Mortgagees and sixty-seven percent (67%) of the voting interests of the Lot Owners shall have given their approval, the Association shall not be entitled:

- (a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior, appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;
- (b) to fail to maintain fire and extended coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance values (based on current replacement costs);
- (c) to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement, or reconstruction of Improvements on the Common Area; or
- (d) sell a portion of the Common Area.

13.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association receives the approval of: (a) at least sixty-seven percent (67%) of all first Mortgagees (based on one (1) vote for each Mortgage held) of the Lots; and (b) the Owners of at least sixty-seven percent (67%) of the Lots (not including Lots owned by Declarant), the Association shall not be entitled:

- (a) by act or omission to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or
- (b) to change the ratio or method of determining the obligations, Assessments, dues, or other charges which may be levied against a Lot or the owner thereof.

Neither this Article XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of first Mortgagees.

13.3 Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

- (a) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of fifteen-thousand dollars (\$15,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(b) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same the Association plans to abandon or terminate the planned unit development established by this Declaration.

13.4 Notice of Owner's Delinquency. The Association may, but is not required to, give notice to any Mortgagee of an Owner's delinquency in paying Assessments by sending the Mortgagee a copy of the Notice of Lien or other documents filed against the Lot by or at the request of the Association to enforce its lien through foreclosure efforts.

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

13.6 Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records, and audit financial statements of the Association.

13.7 Right to Pay Taxes and Charges. First Mortgagees may, jointly or separately, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

13.8 Rights Upon Foreclosure of Mortgagee. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

13.9 Deemed Consent. If a security holder's consent is a condition for amending the Declaration or Bylaws, the security holder's consent is presumed given, even if not actually given, if the Association complies with Section 210 of the Act.

#### **ARTICLE XIV** **GENERAL PROVISIONS**

14.1 Enforcement. Subject to the provisions of Article XV, this Declaration and provisions in other Governing Documents may be enforced by the Association, Declarant, and any Owner. The breach of any of the provisions contained in this Declaration and other Governing Documents and the continuation of any such breach may be enjoined, abated, or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a Lot in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in the Governing Documents. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(a) The result of every act or omission whereby any of the provisions contained in the Governing Documents are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Declarant for so long as Declarant owns a Lot.

(b) The remedies herein provided for breach of the provisions contained in Governing Documents shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(d) Any breach or amendment of the provisions contained in the Governing Documents shall not affect or impair the lien or charge of any first Mortgagee made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such Lot shall be bound by such provisions of the Governing Documents, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(e) The Association, through its Board, has the power to levy fines for violations of the Association's Governing Documents. The Board may adopt a Rule for the procedure to enforce the Governing Documents and levy fines, including a schedule of fines. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the Governing Documents. Furthermore, pursuant to Utah Code § 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant.

14.2 Notice of Violation; Recording Authorized. If an Owner, or Occupant for whom the Owner is responsible, violates the Governing Documents of the Association and after the Association provides the Owner with: (a) written notice of the violation; (b) a reasonable opportunity to be heard; and (c) a reasonable opportunity to cure the violation; then the Association may, in addition to and not in lieu of other remedies, Record against the Owner's Lot a "Notice of Covenant/Rule Violation" in the records of the County Recorder. The Notice of Covenant/Rule Violation shall include the following: (i) name of the owner; (ii) address of the Association, or its Manager; (iii) the violated provision(s) of the Governing Documents; and (iv) any other information the Board deems relevant to include in such notice. The Notice of Covenant/Rule Violation runs with the land and shall be released when the Board determines that the violation has been cured. By accepting an ownership interest in the Lot, the Owner authorizes the Association to record such a Notice of Covenant/Rule Violation and Owner waives and right and claim to assert that the recording of the Notice of Covenant/Rule Violation constitutes a wrongful lien or improperly clouds title to the Lot.

14.3 Non-Waiver. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

14.4 Amendment. Any amendment to this Declaration shall require the approval of at least sixty-seven percent (67%) of all Membership votes represented in person, by proxy, or by ballot which are entitled to be cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such

meeting shall be as follows: At the first meeting called, the representation of Members in person, through proxies, or through ballots entitled to cast fifty percent (50%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Notwithstanding anything herein contained, and as further set forth in Article XV, Declarant has, and is hereby vested with, the right to unilaterally amend this Declaration as Declarant believes may be reasonably necessary or desirable. Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred, except for amendments unilaterally made by the Declarant. Until the expiration of the Declarant Control Period, any amendment to the Declaration must be approved by the Declarant, in writing.

(a) Amendment to Conform with Law. Notwithstanding the right of the Owners to amend the Declaration, the Board has the right, upon advice of the Association's legal counsel and without Owner approval, to amend the Declaration, as necessary, to conform to any local, state, or federal laws which mandate changes to the Declaration or which laws would render one or more covenants obsolete or contrary to law.

14.5 Notice. Unless otherwise set forth in the Bylaws, the Association may provide notice to the Members as set forth in this Section. The Association may provide notice to Owners by electronic means, including text message, email, social media, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

(a) when Electronically Transmitted, such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

(b) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

(c) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (i) when received; (ii) five (5) days after it is mailed; or (iii) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

(d) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

(e) when hand delivered, the notice is deemed effective immediately upon delivery;

(f) when notice is given orally, the notice is deemed effective when communicated; or

(g) when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

14.6 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

14.7 Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice. The Board has no authority to enter into any management agreement, or contract, which is inconsistent with the terms of this Section and a professional management company may not rely upon such presumed authority of the Board if the terms of the agreement is contrary to the provisions of this Section.

14.8 Bulk Service Agreements. The Association has the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and, in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment. After the Declarant Control Period, the Board and the Association shall not have any authority to enter into any such agreement, unless approved by a majority of the voting interests of the Membership, that: (a) is of any duration longer than five (5) years; (b) automatically renews at the end of its term, or (c) provides for any permanent easement over any part of the property. Any agreement entered into in violation of this provision shall be null and void.

(a) Income Generated from Service Providers. During the Declarant Control Period, the Declarant may negotiate terms with service providers which desire to install certain infrastructure to provide services to Lots and Owners in the Project. Any income gained from these negotiations with the services providers by Declarant may be retained by the Declarant until termination of the Declarant Control Period.

14.9 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable to: (a) aid it in administering the affairs of the Association; (b) insure that the Properties are maintained and used in a manner consistent with the interests of the Owners; (c) regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon; and (d) establish penalties and fines for the infractions of any provisions of the Governing Documents. Pursuant to Utah Code § 57-8a-218(19), the requirements of Utah Code § 57-8a-218 are hereby modified to not apply to the Association. Fines, subject to limitations under the Act, may be assessed as a Corrective Assessment against the Lot. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with the Declaration or the Act. Except during the Declarant Control Period or in the case of imminent risk of harm to a Common Area, a limited Common Area, an Owner, a Lot or a dwelling, the Board



shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding, or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration.

14.10 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a handicap (as defined by Federal law at the time the accommodation is requested) or disability (as defined by state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area, the Limited Common Area, or the buildings, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else

14.11 Limitation on Liability to Association Representatives. To the fullest extent permitted by applicable law, neither members of the Board, the ACC, 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.

14.12 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.13 Rule Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of any Governing Document of the Association. If for any reason the Declaration or other Governing Document does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

14.14 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. 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. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by this Declaration.

## **ARTICLE XV**

### **DECLARANT RIGHTS AND CONFLICT RESOLUTION**

15.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the rights provided for in this Article XV in addition to any other rights provided to the Declarant in other sections of the Declaration. If any

other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, they shall all, nonetheless, be subject to the terms in this Article XV. Declarant.

15.2 Assignment of Declarant Rights and Powers. Any and all rights and powers of the Declarant contained in this Declaration may be delegated, transferred, or assigned. In the event of any such transfer of Declarant rights, the Declarant shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Declarant(s) shall have all the rights and obligations of Declarant contained herein.

15.3 Declarant Control Period. Declarant shall have the right to retain control, power, and authority over, and all decision-making ability or authority for, the Association and the Project during the “Declarant Control Period.” The Declarant shall determine whether to hire professional management during the Declarant Control Period. The Declarant Control Period shall extend until the Declarant elects, in writing, to terminate the Declarant Control Period or until three years after the Class B Membership ceases pursuant to Section 4.1(b) of the Declaration.

15.4 Right to Appoint Board and ACC During Declarant Control Period. The Declarant has the right to appoint and remove all members of the Board and ACC during the Declarant Control Period. In appointing such members of the Board and ACC, the Declarant is not bound by any qualifications set forth the Governing Documents for members of the Board or ACC. The Declarant may elect to have a Board 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 Board and ACC without appointing members to the Board.

15.5 Right to Establish Assessments. The Declarant has the right to establish all Budgets and set the amount of all Assessments during the period of Declarant Control. Notwithstanding the Assessment of other Lots, no Lots owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments and in the amount of Assessments the Declarant elects to pay.

15.6 Declarant Easement Rights, Right to Correct, and Exemptions from Use Restrictions. The Declarant, and others it may designate, has an easement for access across the entire Project, including the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Properties, including Lots, and a perpetual, non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in any emergency, entry onto a Lot or into a Dwelling Unit shall be only after reasonable notice to the Owner and no entry into a Dwelling Unit shall be permitted without the Owner’s consent. The Person exercising the Declarant’s easement rights shall promptly repair, at such Person’s own expense, any damage resulting from such exercise. The Declarant is not bound by any use restrictions in the Declaration as such use restrictions would otherwise relate to the Lots owned by the Declarant.

15.7 Easement to Inspect and Right to Correct. Declarant and others it may designate have the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Properties, including Lots, and a perpetual, non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in any emergency, entry onto a Lot or Parcel shall be only after

reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

15.8 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, and except as otherwise may be expressly set forth on a recorded Plat or other instrument recorded in the office of the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Project can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

15.9 Right to Amend Governing Documents. Until the expiration of the Declarant Control Period, the Declarant has the unilateral right to amend, revise, and modify this Declaration, the Plat, the Bylaws, the Rules and Regulations, and the general plan of development for the Project 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. Any such amendment to the Declaration or Bylaws shall be effective upon the Declarant's Recordation of the amendment duly signed by an authorized officer or manager of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein, including all 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 Lot. Until the expiration of the Declarant Control Period, any amendment must be approved by the Declarant, in writing.

(a) Subject to necessary approvals from any applicable municipality or governmental agency, the Declarant shall have the right to amend, change, or modify the Plat, subject only to the requirement that the Declarant get approval from any Owner of a Lot that will have any boundary modified by the amended Plat.

15.10 Annexation by Declarant. Declarant may expand the real property subject to this Declaration by the annexation of additional property into the Development. The annexation of such land shall become effective and extend this Declaration to such real property upon the Recordation of a Supplemental Declaration or similar instrument which:

- (a) describes the real property to be annexed or incorporated by reference;
- (b) declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied, and improved as part of the Properties subject to this Declaration; and
- (c) sets forth such additional limitations, restrictions, covenants, conditions complementary additions to the covenants, conditions and restrictions contained in this Declaration as are not inconsistent with this Declaration and which do not create a character different than exists in the Development and is intended by this Declaration.

Any such annexation may be accomplished in one or more annexations or phases of development without limitation as to size or location of the additional property to be added to the Development. When such annexation becomes effective, said real property shall be subject to this Declaration and subject to the functions, powers, authority, and jurisdiction of the Association,

and thereafter all of the Owners of Lots in the Properties shall automatically be members of the Association.

15.11 Limitation on Annexation. Declarant's right to annex said real property to the Properties shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) All Lots added to the Properties shall be for residential purposes, except as otherwise provided for in this Declaration.

(b) Declarant reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Declarant makes no assurances that such Common Areas or Improvements will be established.

(c) The configuration of annexed land as to Lot size, Common Areas and the type of Improvements is reserved to the Declarant.

15.12 Expansion of Definitions. In the event the Properties are expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Properties as so expanded.

15.13 Declarant Exemption from Certain Statutory Obligations. Pursuant to Utah Code § 57-8a-217(6), Declarant is hereby exempt from the provisions of Utah Code § 57-8a-217 and from the Association's Rules. Pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2)-(9) shall not apply or have any effect during the Declarant Control Period and, as specifically allowed 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.

15.14 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article, and elsewhere in the Declaration, do not impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and any Owner hereby expressly 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.

15.15 Limitations on 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.

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

Subject only to the provisions in the Association warranties (if any) and the Owner warranties (if any), the Association and the Owners take ownership and possession of the Lots, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as

otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the fullest extent allowed by law. Moreover, by accepting ownership of the Lot, the Owner waives and disclaims, to the fullest extent allowed by law, any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, an implied warranty of merchantability or an implied warranty of fitness for a particular purpose. In addition, whether or not an Owner experiences mold growth in a Dwelling Unit depends to a great extent on how the Owner manages and maintains the Dwelling Unit. Owner is hereby given notice to take all reasonable means to detect and prevent growth and infestation of mold and other similar agents. The Declarant will not be responsible for any damages and, by accepting ownership of the Lot, Owner waives any claim to damages, caused by mold, or by some other agent, which may be associated with customary construction practices in the area, which waiver includes, without limitation, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects or losses.

15.16 Waiver of Subrogation and Release. The Association and each Owner of a Lot waives any right to subrogation against the Declarant and any builder 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 and builder, their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant and builder, their officers, employees, owners, and representatives from any and all liability and losses 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 Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner respectively agrees 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 against all losses and liabilities and defend the Declarant, the builder, and any of their 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.

15.17 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot and Dwelling Unit which the Owner is purchasing, or any aspect of the Project; all prior to purchasing a Lot. Moreover, if any warranty has been provided, a warranty has been provided to each initial Owner identifying those items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty, if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to then seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project, outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) 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 sale value and ability to obtain financing for the purchase of Lots for years, unfairly

prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners (by purchasing a Lot) and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms, and only after full disclosure, a right to cure, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce, from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners, by and upon the purchase of 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 arising from defects of any kind related to construction or development of the Project. The intent of this Section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the buildings and fixtures on 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 a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

15.18 Agreement to Encourage Resolution of Construction Defect Disputes Without Litigation.

(a) Declarant, the Association, and all Persons subject to this Declaration (collectively, the “**Bound Parties**”) hereby agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving a Claim (as defined in subsection (b)) without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 15.19 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term “**Claim**” shall refer to any claim, grievance, or dispute arising out of or relating to the design or construction of improvements by Declarant within the Properties.

15.19 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice (“**Notice of Claim**”) to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including a specific description and calculation of the alleged damages, the Persons involved, the Respondent’s role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) documents and materials supporting the Claim, including any photographs of any alleged condition, samples of any alleged defective conditions or

materials, and supporting opinions, information, or other factual evidence upon which the Claim is based;

- (iv) the efforts taken by Claimant to avoid, mitigate, or minimize the Claim or any alleged damages related thereto;
- (v) the Claimant’s proposed resolution or remedy; and
- (vi) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Notice of Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice of Claim, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice of Claim (or within such other greater period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the local area.

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

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

**DISPUTE RESOLUTION TIMELINE FOR CLAIM BETWEEN BOUND PARTIES**

<b>Day 1</b> <u>Written Notice of Claim</u>	<b>Days 2-30</b> <u>Negotiations</u>	<b>Days 31-60</b> <u>Request Mediation</u>	<b>Days 61-90+</b> <u>Mediation</u>
<ul style="list-style-type: none"> <li>• Factual Basis</li> <li>• Legal Basis</li> <li>• Propose a resolution</li> <li>• Propose a meeting</li> <li>• Send copy to Board</li> </ul>	<ul style="list-style-type: none"> <li>• Good faith effort</li> <li>• Parties meet in person</li> <li>• May request Board assistance</li> </ul>	<ul style="list-style-type: none"> <li>• Claimant must submit claim</li> <li>• Mediator assigned by Association or independent agency</li> <li>• If Claim is not submitted, it is waived</li> </ul>	<ul style="list-style-type: none"> <li>• Agency supplies rules</li> <li>• Fee split between parties</li> <li>• Written summary from each side</li> <li>• Supervised negotiation</li> <li>• Contractual settlement or Termination of mediation</li> </ul>

Each Party shall bear its own costs of the mediation, including attorney fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or

award shall, upon prevailing, be entitled to recover from non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation attorney fees and court costs.

15.20 Initiation of Litigation and Limitation of Action. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Claimant shall not initiate any judicial or administrative proceeding against the Declarant for a Claim unless approved by a vote of seventy-five percent (75%) of the total Class A votes in the Association. If the Claimant is the Association, then, regardless of the amount in controversy, the Association shall not initiate any judicial or administrative proceeding against the Declarant until satisfying each of the requirements set forth in Utah Code § 57-8a-229(1)-(3). This Section shall not be amended unless such amendment is approved by the Declarant in writing. No litigation or dispute resolution may be commenced by a Claimant unless brought within one (1) year from the date the cause of action accrued.

15.21 Repurchase Option for Construction Defect Claims. In the event that any Owner commences an action against Declarant, or any Declarant related entity, in connect with any alleged construction defect claims in such Owner's Lot or Dwelling Unit, Declarant shall have the option, but not obligation as such option may be exercised in Declarant's sole discretion, to purchase such Lot and Dwelling Unit from Owner pursuant to the following terms:

(a) The purchase prices shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

- (i) the purchase price paid by the original Owner of the Lot and Dwelling Unit when originally purchased from Declarant;
- (ii) the agreed upon value of any Improvements made to the Lot and Dwelling Unit by anyone other than the Declarant, or Declarant's related entities; and
- (iii) the Owner's reasonable moving costs, but not the costs related to any other lot or parcel of real property purchased by Owner.

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from the Declarant to Owner of Declarant's intent to exercise the option to purchase Owner's Lot and Dwelling Unit.

(c) Owner shall convey title of the Lot to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real property taxes related to the Lot.

(d) Declarant's exercise of the repurchase option as provided herein shall constitute full and final satisfaction of all claims relating to the subject Lot and Dwelling Unit. Owner shall promptly execute and deliver any notice of dismissal and any other documents necessary or appropriate to evidence such satisfaction.

(e) Declaration's repurchase option granted herein with respect to any particular Lot and Dwelling Unit shall automatically terminate upon the expiration of the last applicable statute of limitation, or statute of repose, applicable to any construction or warranty claim governing such Lot and Dwelling Unit, including all applicable tolling periods.



15.22 Declarant Approved Builder. During the Declarant Control Period, only builders and contractors approved in advance by the Declarant, in Declarant's sole discretion, may construction a Dwelling Unit or any other Improvement on a Lot in the Project.

15.23 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and to combine Lots or Dwelling Units so long as Declarant owns the Lots to which the boundary modifications will apply; provided, however, such changes may not extensively alter the boundaries of the Common Area or change the percentage of ownership interest appurtenant to the Lots.

15.24 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents, and specifically in this Article XV, shall not be substantively or procedurally altered without the written consent of the Declarant until six (6) years have passed after the Declarant Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining the necessary consent of the Declarant shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article XV. Any consent to waive, change, or alter any provisions of Article XV by any successor Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.

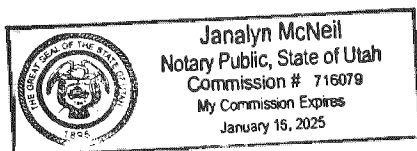
IN WITNESS WHEREOF, Declarant executed this Declaration on the 9 day of ~~August~~ <sup>February</sup>, 2023

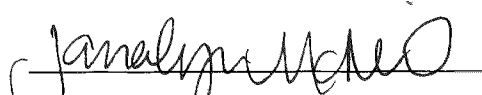
Declarant: Hallmark Homes and Development

  
By: Christian Knudsen, authorized agent

STATE OF UTAH,        )  
                                  :ss.  
County of Salt Lake    )

On this 9<sup>th</sup> day of ~~August, 2022~~ <sup>February, 2023</sup>, personally appeared before me Christian Knudsen, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is an authorized agent of Hallmark Homes and Development, and that he executed the foregoing Declaration on behalf said company being authorized and empowered to do so, and he acknowledged before me that such company executed the same for the uses and purposes stated therein.



  
Notary Public

# EXHIBIT A

## Legal Description

A parcel of land situated in the Northwest Quarter of Section 31, Township 1 South Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Southerly Right-of-Way of 3500 South Street, said point being South  $89^{\circ}55'19''$  West 935.76 feet along the North Section line and South  $00^{\circ}03'02''$  East 40.00 feet from the North Quarter of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running;

thence South  $00^{\circ}03'02''$  East 662.20 feet to the Center line of the North Jordan Canal;  
thence North  $70^{\circ}00'00''$  West 257.07 feet along the Center line of said North Jordan Canal;

thence North  $00^{\circ}03'07''$  West 436.02 feet;

thence North  $89^{\circ}56'19''$  East 116.50 feet;

thence North  $00^{\circ}03'05''$  West 138.00 feet to a point on the Southerly Right-of-Way of said 3500 South Street;

thence North  $89^{\circ}56'19''$  East 125.00 feet along the Southerly Right-of-Way of said 3500 South Street to the point of beginning.

Contains 133,193 square feet or 3.058 acres.

PARCEL NUMBERS: 15311290010000 through 15311290620000.

# **EXHIBIT B**

**Bylaws  
of  
Lofts on 35th  
Home Owners Association**

**BYLAWS  
OF  
LOFTS ON 35<sup>TH</sup>  
HOME OWNERS ASSOCIATION**

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**BYLAWS  
OF  
LOFTS ON 35<sup>TH</sup> HOME OWNERS ASSOCIATION**

**ARTICLE I - GENERAL**

**1.1. Purpose of Bylaws.**

These Bylaws are adopted and established for the regulation and management of the affairs of the Lofts on 35<sup>th</sup> Home Owners Association, a Utah nonprofit corporation (the "Association"), in accordance with the in the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Lofts on 35<sup>th</sup>, as amended or supplemented from time to time (the "Declaration"), to perform the functions as provided in the Declaration and to further the interests of Owners of Lots within the Property.

**1.2. Terms Defined in Declaration.**

Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

**1.3. Controlling Laws and Instruments.**

These Bylaws are subject to the Utah Revised Nonprofit Corporation Act (Utah Code §16-6a-101, *et seq.*) ("Nonprofit Act") and the Community Association Act (Utah Code § 57-8a-101, *et seq.*) ("Association Act") (collectively the "Acts"), the Declaration, and the Articles of Incorporation of the Association ("Articles") filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "Division"), as any of the foregoing may be amended from time to time. Where these Bylaws differ from the Nonprofit Act or the Association Act, these Bylaws shall control unless the provisions of either the Nonprofit Act or the Association Act, or both, are mandatory and not default provisions.

**ARTICLE II - OFFICES**

**2.1. Principal Office.**

The principal office of the Association shall be at the address identified in the Association's latest annual report filed with the Division. The Board in its discretion may change from time to time the location of the principal office. (A member of the Board shall hereinafter be referred to as a "Director.")

**2.2 Registered Office and Agent.**

The Acts require that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles and may be changed by the Association at any time, without amendment to the Articles, by filing a statement as specified by law with the Division.



**2.3 Utah Homeowner Associations Registry.**

In compliance with Utah Code § 57-8a-105, the Association shall register with the Division's Homeowner Associations Registry and shall periodically update its registration information as required by law.

**ARTICLE III – MEMBERS**

**3.1 Members.**

A "Member" is the Person or, if more than one (1), all Persons collectively, who constitute the Owner of a Lot within the Project.

**3.2 Memberships Appurtenant.**

Each Membership shall be appurtenant to the fee simple title to a Lot. The Person or Persons who constitute the Owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

**3.3 Members' Voting Rights.**

Subject to the provisions in the Declaration and the Articles, each Member shall be entitled to one (1) vote for each Lot which the Member owns within the Property.

**3.4 Voting by Joint Owners.**

In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy, or through ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

**3.5 Resolution of Voting Disputes.**

In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

**3.6 Transfer of Memberships on Association Books.**

Transfer of membership shall be made on the books of the Association only upon the presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous holder of the Membership as the holder of the membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

**3.7 Assignment of Voting Rights to Tenants and Mortgagees.**

A Member may assign the Member's right to vote to a tenant occupying the Member's Dwelling Unit or to a Mortgagee of the Member's Lot for the term of the lease or the Mortgage and any sale, transfer or conveyance of the Dwelling Unit and the Lot upon which it is situated shall, unless otherwise provided in the document of sale, transfer or conveyance, be

subject to any such assignment of voting rights to any tenant or Mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the secretary of the Association. Any such assignment of voting rights shall be automatically terminated and revoked upon the sale, transfer, or conveyance of the Lot.

## **ARTICLE IV - MEETING OF MEMBERS**

### **4.1 Place of Members' Meetings.**

Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Project, as may be fixed by the Board and specified in the notice of the meeting.

### **4.2 Annual Meetings of Members.**

Annual Meetings of the Members shall be held at such time of day as is fixed by the Board and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting.

### **4.3 Special Meetings of Members.**

Special meetings of the Members may be called by the President or the Board or by Members holding not less than twenty-five percent (25%) of the total votes of all Members, excluding votes of the Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

### **4.4 Record Date/Members List.**

4.4.1. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 4.4.2 below, unless the Board, in advance of sending notice, set a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of: (a) the close of business on the day on which the Board adopts the resolution relating to the exercise of the right; or (b) the close of business on the sixtieth (60<sup>th</sup>) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board fixes a new date for determining the right to notice or the right to vote.

4.4.3. The Association shall only be required to prepare a list of the names of the Members, including without limitation, a list of Members used to take action by written ballot, as provided for in Section 9.3.3.

**4.5 Notice of Members' Meetings.**

Written notice stating the place, day and hour of any meeting shall be delivered not less than fifteen (15) nor more than sixty (60) days before the date of the meeting (plus any time added to effectuate deliver under Section 9.18). The notice of an annual, regular or special meeting shall include any of the following which may apply to the particular meeting: (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a trustee or has a financial interest (as set forth in Utah Code § 16-6a-825), if any; (c) notice of any indemnification or advance of expenses to a Director in connection with a legal "proceeding" as defined in the Acts; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary, or general statement of the proposed amendment; (e) notice of a proposed plan of merger with another association; (f) notice of a proposed sale of any portion of the Properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a Person entitled to call a special meeting and the request is received by the Secretary or President at least ten (10) days before the Association gives notice of the meeting. The notice of a special meeting shall state the purpose or purposes for which the meeting is called.

**4.6 Proxies at Meetings.**

A Member entitled to vote at a meeting may vote in person, by ballot, or by proxy executed in writing by the Member or the Member's duly authorized attorney-in-fact and filed with the Secretary of the meeting, or other designated Person by the Board to receive the proxies of the meeting, prior to the time the proxy is exercised.

**4.7 Ballots at Meetings.**

A written ballot may, upon the election of the Board, be used in connection with any annual, regular, or special meeting of Members, thereby allowing Members the choice of either voting in person, by proxy, or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Section 4.8 and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

**4.8 Ballots without a Meeting and Electronic Voting.**

The Association may, upon the election of the Board or upon specific request of a Member for a special meeting of the Members, utilize ballots without a meeting to take any action that may be taken at any annual, regular, or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when: (a) the time by which all ballots must be received has passed so that a quorum can be determined; and (b) the number of approvals equals or exceeds the number

of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.8.1 All solicitations for votes by written ballot shall: (a) set forth each proposed action; (b) provide for an opportunity to vote for or against each proposed action; (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter, other than the election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.8.2 Any written ballot shall comply with the requirements in this Section 4.8 and shall be counted equally with the votes of Members in attendance (by person or proxy) at any meeting for every purpose, including satisfaction of a quorum requirement.

4.8.3 Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if (a) Members are given at least fifteen (15) days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; (b) Members are given at least thirty (30) days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or (c) considering all the circumstances, the amount of time is otherwise reasonable.

4.8.4 The Association and its Members, by adoption of these Bylaws, agree to allow voting by electronic means. To effectuate electronic voting, ballots may be signed electronically as provided for in Subsection 4.19.

#### **4.9 Revocation of Proxy or Ballot.**

A proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by: (a) the Member attending the meeting and voting in person; or (b) the Member signing and delivering to the Secretary or other Person authorized to tabulate proxy or ballot votes either (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after the earlier of: (a) the day after the meeting of the Members for which the proxy was expressly submitted; or (b) eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the Secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

#### **4.10 Action through Written Consents Without a Meeting.**

Unless prohibited by the Articles, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice, if one (1) or more written consents, setting forth the action taken, are signed by the Members having not less than the minimum voting power that would be necessary to authorize or take the action at a

meeting at which all Members entitled to vote on the action were present and voted. Directors may not be elected by written consent, except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section 4.10 is not effective unless all written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by Electronic Transmission or other form of communication providing the Association with a complete copy of the written consent, including: (a) the date the written consent was sent; and (b) the signature (including electronic signatures as provided in Section 4.19).

**4.11 Telecommunications.**

Any or all of the Members may participate in an annual, regular, or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all Persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by a means permitted under this Section 4.11 is considered to be present in person at the meeting.

**4.12 Quorum at Members' Meetings.**

Except as may be otherwise provided in the Declaration, the Articles, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least twenty-five percent (25%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

**4.13 Adjournment of Members' Meetings.**

Members present in person or by proxy at any meeting, whether or not there is a quorum may adjourn the meeting from time to time. Except as may be otherwise provided in the Declaration, the Articles, or these Bylaws, if the meeting is adjourned, the Board shall issue a new Notice of Members Meeting at which meeting the members that are present in person or by proxy or represented by ballot shall constitute a quorum, except as otherwise provided in the Declaration, the Articles, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

**4.14 Vote Required at Members' Meetings.**

At any meeting where a quorum is present, action on a matter, other than the election of Directors, is approved if the votes cast favoring the action exceed the votes cast opposing the action unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws. In the case of elections to the Board, a quorum is not required and when there is more than one (1) candidate, the Person or Persons receiving the highest number of votes shall be elected.

**4.15 Cumulative Voting Not Permitted.**

Cumulative voting by Members in the election of Directors shall not be permitted.

**4.16 Order of Business.**

Unless otherwise changed by resolution of the Board or the Members, the order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

**4.17 Expenses of Meetings.**

The Association shall bear the expenses of all regular and annual meetings of Members and of special meetings of Members.

**4.18 Waiver of Notice.**

A Member may waive any notice required by the Acts or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting: (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

**4.19 Signature of Members.**

Except as otherwise provided in the Acts, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity (i.e., owner, partner, president, director, member, trustee, conservator, guardian, etc.). Pursuant to Utah Code § 46-4-201 a signature may not be denied legal effect or enforceability solely because it is in electronic form (i.e., an electronic signature). As used herein, the term "electronic" means relating to technology having electrical, digital, magnet, wireless, optical, electromagnetic, or similar capabilities. As used herein, the term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a ballot and executed or adopted by a person with the intent to sign the ballot.

**ARTICLE V - BOARD OF DIRECTORS**

**5.1 General Powers and Duties of the Board of Directors.**

The Board shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board shall have the power to exercise or cause to be exercised for the Association all of the powers, rights and authority of the Association not reserved to Members in the Declaration, the Articles, these Bylaws, or the Acts.

## **5.2 Special Powers and Duties of the Board of Directors.**

Without limiting the foregoing statement of general powers and duties of the Board or the powers and duties of the Board as set forth in the Declaration, the Board shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time to time Assessments, Special Assessments, and all other Assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent assessments as provided in the Declaration.

5.2.2 Insurance. The duty and authority to contract and pay premiums for fire, casualty, liability, and other insurance policies in accordance with the provisions of the Declaration.

5.2.3 Common Areas. The duty to manage and care for the Common Areas, and to employ personnel necessary for the care and operation of the Common Areas, and to contract and pay for necessary or desirable improvements on property acquired by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Declaration, the Articles, and these Bylaws.

5.2.5 Borrowing, Loans. The power, with the approval of the Members representing at least sixty-seven percent (67%) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Governing Documents and other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers according to law.

5.2.8 Rules and Regulations. The power to adopt such Rules and Regulations with respect to the interpretation and implementation of the Declaration, use of Common Areas, and use of any property within the Project, including Lots and Dwelling Units, and to levy fines and penalties for infractions and violations thereof; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Acts and other Governing Documents of the Association.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Acts.

## **5.3 Qualifications of Directors.**

A Director must be a natural person eighteen (18) years of age or over and an Owner of a Lot within the Property, the spouse of an Owner, or, if the Owner of any such Lot is a trust,

partnership, corporation, or limited liability company, must be a designated representative of such trust, partnership, corporation, or limited liability company. If a Director conveys or transfers title to the Director's Lot, or if a Director who is a designated representative of a trust, partnership, corporation, or limited liability company ceases to be such designated representative, or if the trust, partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Only one (1) Owner of a Lot may serve as a Director at any one time. Notwithstanding anything in this Section to the contrary, none of the Directors appointed by the Declarant during the Declarant Control Period shall be required to have any ownership interest in any Lot in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office.

**5.4 Number of Directors.**

The number of Directors of the Association shall be not less than three (3) and not more than five (5). Subject to such limitations, the number of Directors shall be three (3) until changed pursuant to this Section 5.4. The number of Directors can be increased beyond three (3) Directors to five (5) by the majority vote of the Board.

**5.5 Term of Office of Directors and Elections.**

The affairs of the Association shall be initially managed by a Board composed of three (3) individuals, unless changed pursuant to Section 5.4. The Board shall be elected at a meeting of the Members by any authorized and lawful procedure adopted by the Board, to serve as follows:

At each annual meeting of the Members, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years. In the initial election of Directors, the method of election shall provide that the term of an odd number of Directors (at least two (2) less than the entire Board) shall expire in the next odd numbered year, and the term of an even number of Directors shall expire in the next even numbered year.

Directors newly elected at the annual meeting of the Members shall take office immediately. Newly elected Directors are invited to attend Board meetings to familiarize them with the Association procedures prior to taking office. Only Members who are not in violation of the Declaration, these Bylaws or Association rules and regulations shall be eligible to run for a position on the Board.

In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected having the highest number of votes cast in favor of their election, are elected to the Board. When only one (1) Director position is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board. In the event of a voting tie, or deadlock, between two or more candidates, the Members shall revote with votes being cast



only for those candidates who were tied. If the voting is still tied after the revote, the election will be decided by a flip of a coin.

This Section 5.5 does not apply to Board during the Declarant Control Period as the Declarant retains the power and authority to decide on the number of Directors and to appoint the Directors during the Declarant Control Period.

**5.6 Nominating Committee.**

Nominations for election to the Board may be made by a nominating committee. Nominations may also be made from the floor at the annual meeting of the Members. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two (2) or more Members of the Association. Any nominating committee shall be appointed by the Board prior to each annual meeting of the Members. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among the Members.

**5.7 Removal of Directors by the Members.**

At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association and any Director who shall be absent from three (3) consecutive Board meetings shall be automatically removed from the Board unless determined otherwise by the Board.

**5.8 Resignation of Directors.**

Any Director may resign at any time by giving written notice to the president, to the secretary, or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Division a statement setting forth: (a) that Person's name; (b) the name of the Association; (c) information sufficient to identify the report or other document in which the Person is named as a Director or officer; and (d) the date on which the Person ceased to be a Director or officer or a statement that the Person did not hold the position for which the Person was named in the corporate report or other document.

**5.9 Vacancies in the Board of Directors.**

Any vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board. Should any vacancy of the Board remain unfilled for a period of two (2) months, the Members may, at a special meeting of the Members called for that purpose, elect a Director to

fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

**5.10 Appointment of Committees.**

The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint one (1) or more committees which shall consist of two (2) or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board in the management of the Association, except authority with respect to those matters specified in the Acts as matters which such committee may not have and exercise the authority of the Board.

**5.11 General Provisions Applicable to Committees.**

The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board shall not be applicable to meetings of committees of the Board.

**ARTICLE VI - MEETING OF DIRECTORS**

**6.1 Place of Directors' Meetings.**

Meetings of the Board shall be held at the principal office of the Association or at such other place, within or convenient to the Project, as may be fixed by the Board and specified in the notice of the meeting.

**6.2 Annual Meeting of Directors.**

The annual meeting of the Board shall be held on the same date as, or within ten (10) days following, the annual meeting of Members. The business to be conducted at the annual meeting of the Board shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board is elected or if the time and place of the annual meeting of the Board is announced at the annual meeting of Members.

**6.3 Other Regular Meetings of Directors.**

The Board may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. The resolution of meeting schedule shall be given to all Members of the Association at least forty-eight (48) hours before the first meeting scheduled. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

**6.4 Special Meetings of Directors.**

Special Meetings of the Board may be called by the President or any two (2) members of the Board other than the president. Any special meeting of the Board not regularly scheduled under Section 6.3 shall require the same notice as Section 6.3. In addition, the notice shall specify those matters to be discussed at the special meeting of the Board and only those matters included in the notice shall be addressed at the special meeting.

**6.5 Open Meetings, Member Right to Participate.**

Except as provided in Subsections 6.6, a Board meeting, whether in person or by means of electronic communication, at which the Board can take binding action shall be open to each Member or the Member's representative if the representative is designated in writing. At each meeting, the Board shall provide each Member a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. A Director may not avoid or obstruct the requirements of this Section. However, nothing in this section shall affect the validity or enforceability of an action of a Board. This Section 6.5 does not apply to Board meetings during the Declarant Control Period, except that: (a) there shall be at least one open Board meeting per year; and (b) each time the Association increases a fee or raises an Assessment, the Board shall also hold an open meeting.

**6.6 Closed Meetings.**

The Board may close a meeting to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

If after a vote of the majority of all other Directors, it is determined that a Director has not maintained the confidentiality of any matter covered in the previous paragraph that is addressed at a closed meeting ("Confidential Matter"), the non-offending Directors may take one of the two following steps: (1) exclude the offending Director from any closed meetings at which that matter is addressed; or (2) create a committee to address the Confidential Matter and exclude the offending Director from that committee.

**6.7 Notice to Directors of Board Meetings.**

In the case of all meetings of the Board for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be given not less than two (2) nor more than thirty (30) days before the date of the meeting (plus any time added to effectuate delivery under Section 9.18), by mail, fax, electronic means, telephone or personally, by or at the direction of the Persons calling the meeting, to each member of the Board. If by telephone such notice shall be deemed to be effective when given by telephone to the Director. If given personally, such notice shall be deemed effective upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some Person who appears competent and mature at the Director's home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice to the Director or waiver of such meeting.

**6.8 Notice to Members of Board Meetings.**

At least forty-eight (48) hours before an open Board meeting (plus any time added to effectuate delivery under Section 9.18), the Association shall give written notice of the meeting via email to each Member who requests notice of a meeting, unless: (a) notice of the meeting is included in a meeting schedule that was previously provided to the Member; or (b) the meeting is

to address an emergency and each Director receives notice (receipt deemed effective as set forth under Section 9.18) of the meeting less than forty-eight (48) hours before the meeting. The notice to the Members shall: (a) be delivered to the Member by email, to the email address that the Member provides to the Board or the Association (or via mail if requested in writing by the Member); (b) state the time and date of the meeting; (c) state the location of the meeting; and (d) if a Director may participate by means of electronic communication, provide the information necessary to allow the member to participate by the available means of electronic communication.

**6.9 Proxies.**

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (a) to another Director who is present at the meeting; and (b) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.9 and as permitted by Section 6.16, Directors may not vote or otherwise act by proxy.

**6.10 Telecommunications.**

The Board may permit any Director to participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting. If a Director is to participate in a Board meeting by electronic communication, the Board shall provide the information necessary to allow the Owners entitled to notice of the Board meeting under Section 6.8 to participate by the available electronic means.

**6.11 Quorum of Directors.**

A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person, by ballot, or by proxy, if applicable.

**6.12 Adjournment of Directors' Meeting.**

Directors present at any meeting of the Board may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**6.13 Vote Required at Directors' Meeting.**

At any meeting of the Board, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws.

**6.14 Officers at Meetings.**

The President shall act as chairman and the Board shall appoint a Secretary to act at all meetings of the Board.

**6.15 Waiver of Notice.**

A waiver of notice of any meeting of the Board, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless: (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting; (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting, or (ii) the Association promptly after adjournment of the meeting.

**6.16 Dissent or Abstention.**

The right of dissent or abstention pursuant to Section 6.15 is not available to a Director who votes in favor of the action taken.

**6.17 Action of Directors Without a Meeting.**

6.17.1 By Written Consent. Any action required or permitted by the Nonprofit Act, Declaration, the Articles, or these Bylaws which may be taken at a Board meeting, may be taken without a meeting if all Directors consent to the action in writing. Action is taken under Subsection 6.17.1 at the time the last Director signs a writing describing the action taken, unless, before that time, any Director revokes a consent by a writing signed by the Director and received by the Secretary or any other Person authorized by these Bylaws or the Board to receive the revocation. Action under this Subsection 6.17.1 is effective at the time it is taken, unless the Board establishes a different effective date.

6.17.2 With Advance Notice. Any action required or permitted by the Nonprofit Act, Declaration, Articles or these Bylaws which may be taken at a Board meeting may be taken without a meeting if notice is transmitted in writing to each Director and each Director, by the time stated in the notice: (a) (i) signs a writing for such action, or (ii) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and (b) fails to demand in writing that action not be taken without a meeting.

The notice required by Subsection 6.17.2 shall state: (a) the action to be taken; (b) the time by which a Director must respond to the notice; (c) that failure to respond by the time stated in the notice will have the same effect as: (i) abstaining in writing by the time stated in the notice, and (ii) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (d) any other matters the Association determines to include.

Action is taken under this Subsection 6.17.2 only if at the end of the time stated in the notice: (a) the affirmative votes in writing for the action received by the Association

and not revoked pursuant to this Subsection equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors then in office were present and voted; and (b) the Association has not received a written demand by a Director that the action not be taken without a meeting other than a demand that has been revoked pursuant to this Subsection.

A Director's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Director in writing by the time stated in the notice transmitted pursuant to this Subsection and the demand has not been revoked.

A Director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Subsection 6.17.2 may revoke the vote, abstention, or demand in writing received by the Association by the time stated in the notice transmitted.

Unless the notice transmitted pursuant to Subsection 6.17.2 states a different effective date, action taken pursuant to this Subsection is effective at the end of the time stated in the notice.

**6.17.3 General Provisions.** A communication under this Section 6.17 may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection 6.17.2 is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the Association can determine: (a) that the electronic transmission is transmitted by the Director; and (b) the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 6.17, communications to the Association are not effective until received. Action taken pursuant to this Section 6.17 has the same effect as action taken at a meeting of Directors and may be described as an action taken at a meeting of Directors in any document.

## **ARTICLE VII – OFFICERS**

### **7.1 Officers, Employees, and Agents.**

The officers of the Association shall be natural persons eighteen (18) years of age or over and shall consist of a President, a Vice-President (optional), a Secretary, a Treasurer, and such other officers, assistant officers, employees, and agents as may be deemed necessary by the Board. Officers other than the secretary and the treasurer must be Directors. The same person may simultaneously hold more than one office.

### **7.2 Appointment and Term of Office of Officers.**

The officers shall be appointed by the Board at the annual meeting of the Board and shall hold office, subject to the pleasure of the Board, until the next annual meeting of the Board or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

**7.3 Resignation and Removal of Officers.**

An officer may resign at any time by giving written notice of resignation to the Association. A resignation of an officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board may: (a) (i) permit the officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board may remove any officer at any time with or without cause. An officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.8.

**7.4 Vacancies in Officers.**

Any vacancy occurring in any position as an officer may be filled by the Board. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

**7.5 President.**

The President shall be a member of the Board and shall be the principal executive officer of the Association and, subject to the control of the Board, shall direct, supervise, coordinate, and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board and of the Members of the Association.

**7.6 Vice-President.**

The Vice-President, if any, may act in place of the President in case of his death, absence, or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board or by the President.

**7.7 Secretary.**

The Secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board, and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of secretary and such other duties as may, from time to time, be assigned to him by the Board or by the president. The Board may appoint one or more assistant secretaries who may act in place of the secretary in case of his death, absence, or inability to act. The duties of the secretary may be delegated to a property management company.

**7.8 Treasurer.**

The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association

and shall submit such reports thereof as the Board may, from time to time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of treasurer and such other duties as may from time to time be assigned to him by the Board or by the president. The Board may appoint one or more assistant treasurers who may act in place of the Treasurer in case of his death, absence, or inability to act. The duties of the Treasurer may be delegated to a property management company.

**7.9 Bonds.**

The Association may pay for fidelity bonds covering officers or other persons handling funds of the Association. The Association shall pay the premiums for any such bonds acquired.

**7.10 Special Appointments.**

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**ARTICLE VIII - INDEMNIFICATION OF OFFICIALS AND AGENTS**

**8.1 Right of Indemnification.**

The Association shall indemnify any Director, officer, committee member, employee, fiduciary, and agent (including without limitation the property manager) to the fullest extent allowed the Acts, or any replacement Sections thereof.

**8.2 Authority to Insure.**

The Association may purchase and maintain liability insurance on behalf of any Director, officer, committee member, employee, fiduciary, and agent against any liability asserted against the Person and incurred by the Person in such capacity or arising out of the Person's status as such, including liabilities for which he might not be entitled to indemnification hereunder.

**ARTICLE IX – MISCELLANEOUS**

**9.1 Amendment/Conflict.**

These Bylaws may be amended, at any regular, annual, or special meeting of the Board, by a vote of the majority of the Board, except if it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. The Members may amend the Bylaws even though the Bylaws may also be amended by the Board. Amendments to the Bylaws by Members shall be made in accordance with the Acts. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**9.2 Compensation of Officers, Directors and Members.**

No Director shall have the right to receive any compensation from the Association for serving as a Director except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board and except as may otherwise be approved by the Members.



Officers, agents, and employees shall receive such reasonable compensation as may be approved by the Board. Appointment of a Person as an officer, agent or employee shall not, of itself, create any right to compensation.

### **9.3 Books and Records.**

9.3.1 The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board; (b) a record of all actions taken by the Members or Board without a meeting; (c) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; (d) a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board; and (e) a copy of the Declaration, as the same may be amended.

9.3.2 The Association shall maintain appropriate accounting records.

9.3.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class; and (b) showing the number of votes each Member is entitled to vote.

9.3.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

9.3.5 The Association shall keep a copy of each of the following records at its principal office: (a) Declaration; (b) Articles; (c) Bylaws; (d) resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Members; (e) the minutes of all Member meetings for a period of three (3) years; (f) records of all actions taken by Members without a meeting; (g) all written communications to Members generally as Members for a period of three (3) years; (h) a list of the names and business or home addresses of its current Directors and officers; (i) a copy of its most recent annual report; (j) all financial statements prepared for periods ending during the last three (3) years; (k) the most recent approved Board meeting minutes; and (l) the most recent budget and financial report.

9.3.6 If the Association has an active website, the Association may make the documents described in Subsection 9.3.5 available to all Members, free of charge, through the website; or, if the Association does not have an active website, make physical copies of the documents described in Subsection 9.3.5 available to Members during regular business hours at the Association's address registered with the Department of Commerce.

### **9.4 Inspection of Records.**

9.4.1 A Director or Member is entitled to inspect and copy any of the records of the Association described in Subsection 9.3.5: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

9.4.2 In addition to the rights set forth in Subsection 9.4.1, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular

business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 9.4.3, and (ii) gives the Association written demand.

9.4.3 A Director or Member may inspect and copy the records described in Subsection 9.4.2 only if: (a) the demand is made: (i) in good faith, and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

9.4.4 Notwithstanding any other provision in these Bylaws, for purposes of this Section: (a) “Member” includes: (i) a beneficial owner whose membership interest is held in a voting trust; and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) “proper purpose” means a purpose reasonably related to the demanding Member’s or Director’s interest as a Member or Director.

9.4.5 The right of inspection granted by this Section may not be abolished or limited by the Articles or these Bylaws.

9.4.6 This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article IX, to compel the production of corporate records for examination.

9.4.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by 9.4.2 for any purposes other than those set forth in the demand made under 9.4.3.

9.4.8 The Association may redact the following information from any document the Association produces for inspection or copying: (a) a Social Security number; (b) a bank account number; or (c) any communication subject to attorney-client privilege.

9.4.9 (a) In a written request to inspect or copy documents, a Member shall include:

- (i) the Association’s name;
- (ii) the Member’s name;
- (iii) the Member’s property address;
- (iv) the Member’s email address;
- (v) a description of the documents requested; and
- (vi) any election or request described in Subsection (b).

(b) In a written request to inspect or copy documents, a Member may:

- (i) elect whether to inspect or copy the documents;

- (ii) if the Member elects to copy the documents, request hard copies or electronic scans of the documents; or
- (iii) subject to Subsection 9.4.10, request that:
  - (A) the Association make the copies or electronic scans of the requested documents;
  - (B) a recognized third-party duplicating service make the copies or electronic scans of the requested documents;
  - (C) the Member be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents; or
  - (D) the Association email the requested documents to an email address provided in the request.

9.4.10 If the Association produces the copies or electronic scans, the copies or electronic scans shall be legible and accurate and the Member shall pay the Association the reasonable cost of the copies or electronic scans and for the time spent meeting with the Member, which may not exceed: (a) the actual cost that the Association paid to a recognized third-party duplicating service to make the copies or electronic scans; or (b) if an employee, manager, or other agent of the Association makes the copies or electronic scans, ten cents (\$.10) per page and fifteen dollars (\$15.00) per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.

9.4.11 If a Member requests a recognized third-party duplicating service make the copies or electronic scans the Association shall arrange for the delivery and pick up of the original documents; and the Member shall pay the duplicating service directly. If a Member requests to bring imaging equipment to the inspection, the Association shall provide the necessary space, light, and power for the imaging equipment.

9.4.12 The Association is not liable for identifying or providing a document in error, if the Association identified or provided the erroneous document in good faith.

## **9.5 Scope of Inspection Right.**

A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. The Association may comply with a Director's or Member's demand to inspect the record of Members under Subsection 9.3.3 by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Subsection 9.3.3; and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fifteen (15) days after the day on which the Association receives a written request of any Member, the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual

financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

**9.6 Right to Inspect.**

Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

**9.7 Annual Report.**

The Board shall cause to be prepared and distributed to each Member, and any first mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing: (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The Board shall also annually distribute to the Members a summary of the latest reserve analysis or update and a full copy to any Member making such request.

**9.8 Statement of Account and Payoff Fee.**

An Owner may request a statement from the Association showing an accounting of all unpaid Assessments and charges to the Owner's account. The Association may set forth in the Rules and Regulations the amount of the fee that the Association will charge for providing such statement. Unless a different amount is set forth in the Rules, such fee will be twenty-five dollars (\$25.00). For any valid request, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The Association may set forth the amount of the fee in the Rules up to the maintenance amount allowed by law. Unless otherwise determined by the Association in its Rules, such fee shall be fifty dollars (\$50.00). Within five (5) business days of any complete payoff information request, the Association shall provide Assessment payoff information needed for the closing. A request for payoff information needed for a closing must: (a) be conveyed in writing; (b) be conveyed to the primary contact person designated by the Association with the Association's registration with the Division; (c) contain: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; (d) be accompanied by a written consent for the release of the payoff information: (1) identifying the person requesting the information as a person to whom the payoff information may be released; and (2) signed and dated by an Owner of the Lot for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.

**9.9 Annual Corporation Reports.**

The Association shall file with the Division, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

**9.10 Fiscal Year.**

The fiscal year of the Association shall be the calendar year, and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board without amending these Bylaws.

**9.11 Seal.**

The Board may, but is not required to, adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "UTAH."

**9.12 Shares of Stock and Dividends Prohibited.**

The Association shall not have, or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors, or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

**9.13 Loans to Directors, Officers, and Members Prohibited.**

No loan shall be made by the Association to its Members, Directors, or officers, and any Director, officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

**9.14 Limited Liability.**

The Association, the Board, the Architectural Control Committee, and any agent or employee of the Association, the Board, or the Architectural Control Committee, shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

**9.15 Minutes and Presumptions Thereunder.**

Minutes or any similar record of the meetings of Members or of the Board, when signed by the secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

**9.16 Checks, Drafts, and Documents.**

All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board.

**9.17 Execution of Documents.**

The Board, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**9.18 Manner of Giving Notice.**

Notwithstanding any other provision in the Governing Documents, the Association may provide notice to Owners orally or by electronic means, including text message, email, social media, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

(a) when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

(b) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

(c) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (i) when received; (ii) five (5) days after it is mailed; or (iii) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

(d) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

(e) when hand delivered, the notice is deemed effective immediately upon delivery;

(f) when notice is given orally, the notice is deemed effective when communicated; or when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

**9.19 Severability.**

Invalidation of any provision of the Governing Documents by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**9.20 Interpretation.**

The provisions of the Governing Documents shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Areas and other areas within the Property. 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. Unless the context requires a contrary

construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction and express Utah law, the Board shall have the exclusive right to construe and interpret the provisions of the Governing Documents, and amendments thereto. In the absence of any adjudication by a court of competent jurisdiction or express Utah law to the contrary, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by the Governing Documents.

## **ARTICLE X - NOTICE AND HEARING PROCEDURE**

### **10.1 Association's Enforcement Rights.**

In the event of an alleged violation by a Member or Occupant ("Respondent") of any provision of the Association's Governing Documents, the Board shall have the right, upon an affirmative vote of a majority of all Directors, to take any one (1) or more of the actions and to pursue one (1) or more of the remedies permitted by law or equity or under the provisions of the Governing Documents. The failure of the Board or the Architectural Control Committee to enforce any provision of the Governing Documents shall not constitute waiver of the right to enforce the same thereafter. The remedies set forth and provided by law or equity or in the Governing Documents of the Association shall be cumulative, and none shall be exclusive.

### **10.2 Hearing.**

(a) At the hearing, the Respondent must show cause, if any cause can be shown, why said Respondent is not in violation of the Governing Documents, as set forth in the notice.

(b) Oral evidence shall be taken only on oath or affirmation administered by a Director. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Board.

(c) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against such party. If Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence of witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(e) Neither the complainant nor the Respondent need be in attendance at the hearing. The Board may close the meeting to the general membership if the Board believes the discussion is likely to cause undue embarrassment or violate the individual's reasonable expectation of privacy.

(f) In rendering a decision, official notice may be taken at any time of any provision of the Governing Documents or any generally understood matter within the working of the Association. Persons present at the hearing shall be informed of the matters to be noticed by the Board, and these matters shall be made a part of the record of proceedings.

(g) The Board may grant continuances on a showing of good cause.

(h) Whenever the Board has commenced to hear the matter and a Director is forced to withdraw prior to a final determination by the Board, the remaining Directors shall continue to hear and decide the case.

**10.3 Decision.**

If a Respondent fails to appear at a hearing, the Board may take action based upon the evidence presented to it without further notice to Respondent. However, the Respondent may make any showing by way of mitigation. After all testimony and documentary evidence has been presented to the Board, the Board may vote by secret written ballot, or otherwise, upon the matter, with a majority of the entire Board controlling. A copy of the Notice of Adjudication of the Board shall be provided by the president of the Association to each Person directly involved in the matter and each Person's attorney, if any, in accordance with the notice provision(s) set forth in these Bylaws. If the Board, in its discretion, deems it appropriate under the circumstances, the Notice of Adjudication of the Board may be posted by the Board at a conspicuous place in the Project. The Notice of Adjudication may include: (a) the terms of any disciplinary action; (b) the levy of any Assessment of fine; or (c) other such actions or remedies as the Board deems appropriate. The decision of the Board shall become effective ten (10) days after it is given to each Respondent, unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the involved persons, on its own motion or on petition by any party. However, no action against a Respondent arising from the alleged violation shall take effect prior to the expiration of the later of: (a) fifteen (15) days after each Respondent's receipt of the Notice of Hearing; or (b) ten (10) days after the hearing required herein.

IN WITNESS WHEREOF, Declarant executed this Declaration on the \_\_\_\_ day of February, 2023.

Declarant: Hallmark Homes and Development

  
By: Christian Knudsen, authorized agent