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Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

When recorded return to:  
Quail Run Development, LLC  
9067 S. 1300 W., Suite 100  
West Jordan, UT 84088

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MONTE CRISTO AT LACAILLE SUBDIVISION**

Quail Run Development, LLC, Declarant  
9067 S. 1300 W., Suite 100  
West Jordan, UT 84088

**DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MONTE CRISTO AT LACAILLE SUBDIVISION**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MONTE CRISTO AT LACAILLE SUBDIVISION (the “**Declaration**”) is made this \_\_\_\_ day of \_\_\_\_\_ 2024, by Quail Run Development, LLC., a Utah limited liability company (the “**Declarant**”).

On the date this Declaration is made, Declarant Quail Run Development, LLC., is the owner of most of the parcels which are part of and subject to the plat for the subdivision known as the Monte Cristo at LaCaille Subdivision (the lots of which may be marketed as “Estates at La Caille™” pursuant to a license agreement). Holladay 2550, LLC, a Utah limited liability company (“**H2550**”) is also an owner of certain land therein, part of which has been dedicated to the common area designated as Quail Hill Lane on the Plat and the remainder of which is now identified as Lot #101. Sandy City Corporation, a Utah municipal corporation (“**Sandy**”), dedicated certain land subject to the plat for public use as a public street and is the owner of the real property which is identified on the Plat as Parcel A. (All of those parcels are respectively identified and more fully described in Exhibit “A” to this Declaration and are together (along with and subject to any future additions or changes) sometimes referred to herein as the “**Subdivision Estate**”). The Subdivision Estate is situated within the boundaries of Sandy City, and of Salt Lake County, Utah, and is the subject of a plan and plat for subdivision and residential development approved by Sandy City (including referenced and associated documents and instruments, the “**Monte Cristo Subdivision Plat**”, as more particularly defined below). The Plat was recorded on November 16, 2022, as Entry # 14042899 in Book 2022P at Page 286, and is incorporated herein by this reference. By its signature below, H2550 affirms its contributions to and participation in the Monte Cristo Subdivision Plat, and consents and agrees without reservation that Quail Run Development, LLC, may make this Declaration and thereby subject the Subdivision Estate, with exceptions, to its provisions. Declarant expressly confirms that Parcel A is not a Lot nor Common Area, and is expressly made exempt from the coverage of this Declaration, and is therefore not subject to the restrictions and covenants, nor to assessments, and its owner has no rights, under this Declaration.

Therefore, pursuant to the Monte Cristo Subdivision Plat, Declarant desires to adopt this Declaration to establish common easements, covenants and hereby imposes upon all properties in the Subdivision Estate other than Parcel A, which is exempt from this Declaration, mutually beneficial restrictions for the benefit of the owners of the Lots of the Subdivision Estate, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Lots and Common Areas of the Subdivision Estate.

In furtherance of the Monte Cristo Subdivision Plat, Declarant has caused or will cause the Monte Cristo at LaCaille Homeowners Association, Inc., to be formed as a Utah non-

profit corporation to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration, the Bylaws, the Design Guidelines, and any Use Restrictions and Rules promulgated pursuant to this Declaration.

Declarant therefore hereby adopts and makes this Declaration, and declares that the Subdivision Estate (except Parcel A), and, reserving the option to expand the Subdivision Estate, any additional real property subjected to this Declaration by Supplemental Declaration, shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions described and established in this Declaration and on the Monte Cristo Subdivision Plat, all of which shall run with the title to the real property, including the subdivided parcels other than Parcel A thereof, subject to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Subdivision Estate other than Parcel A, their heirs, successors, successors-in-title, and assigns, and, as applicable, shall inure to the benefit of each owner of any portion of the Subdivision Estate other than Parcel A.

## **Article I** **DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as provided within this Declaration, including but not limited to those set forth below.

1.1. “Administrative Control Period”: The period of time during which the Declarant, or its successor(s) in interest is (are) entitled to appoint or remove the members of the Board of Directors as provided in the Bylaws, exercise power or authority assigned to the Association under the Declaration, Bylaws or other governing documents, and/or require that actions of the Association or Board of Directors be approved by the Declarant before they become effective.

1.2. “Area of Common Responsibility”: The Common Area, together with such other areas within the Subdivision Estate, such as, but not necessarily limited to, non-disturbance or limited non-disturbance areas, identified in/on the Monte Cristo Subdivision Plat, as well as any areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration hereto, the Post-Construction Storm Water Maintenance Agreement, or any other applicable instruments, covenants, contract, or agreement.

1.3. “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Monte Cristo at LaCaille Homeowners Association, Inc., as filed with the Division of Corporations of the Department of Commerce of the State of Utah.

1.4. “Association”: Monte Cristo at LaCaille Homeowners Association, Inc., a Utah nonprofit corporation, its successors or assigns.

1.5. “Board of Directors” or “Board”: The governing board of the Association, as provided in the Bylaws and generally serving the same role as the board of directors under Utah corporate law.

1.6. “Builder Owner”: Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person’s business.

1.7. “Building Envelope”. The portion of a Lot within which the entire residential structure and any accessory structures must be situated, as shown on the Plat and/or described in the Design Guidelines.

1.8. “Bylaws”: The Bylaws of the Monte Cristo at LaCaille Homeowners Association, Inc., which are attached as Exhibit “B” to this Declaration, as they may be amended from time to time.

1.9. “Common Area”: All rights and interests in real and personal property, including, without limitation, easements, and other rights to possess or use such property, which the Association owns, leases or otherwise holds for the common use and enjoyment of the Owners. The Common Area primarily includes, but is not limited to, the private roadway, sidewalks and trails within the Subdivision Estate. The Common Area does not include Parcel A nor Parcel B.

1.10. “Common Expenses”: The actual and estimated costs and expenses incurred, or anticipated to be incurred, by the Association, including any reasonable Reserve Fund, for the Association’s performance of its duties and obligations and preservation of its rights and interests, pursuant to this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Administrative Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class “A” vote of the Association.

1.11. “Declarant”. Quail Run Development, LLC, a Utah limited liability company, or any successor in interest or assign who takes title to any portion of the Declarant’s property described on Exhibit “A” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided there shall be only one Declarant at any time.

1.12. “Design Guidelines”: The design and construction guidelines, standards, and application and review procedures applicable to the Monte Cristo Subdivision promulgated and administered pursuant to Article IX.

1.13. “General Assessment”: Assessments levied on all Lots subject to assessment under Article IX to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 9.1 and 9.3, without limitation intended.

1.14. "La Caille™ Estate": The various parcels of real property which are together known as and considered to be associated with "La Caille™", situated near the Little Cottonwood Creek, east of Wasatch Boulevard and west of the Monte Cristo at LaCaille Subdivision, which are more fully described on Exhibit "C", attached hereto and incorporated herein by this reference. For references to the term in connection with the Monte Cristo standard, it is intended that the term shall include any future additions of parcels to the estate resulting from acquisition(s) of real property contiguous to the parcels described on Exhibit C by the owners of those parcels and/or any affiliated entity(ies).

1.15. "Landscaping": Lawn, groundcover, trees, shrubbery, flowers and the like within the Common Areas and Lots of the Subdivision Estate which may be complemented by existing geologic features or with earth berms, masonry, retaining walls of cement, wood or similar materials, and the real property located thereunder, together with all sprinkling and irrigation systems related thereto.

1.16. "Limited Disturbance Area": An area or areas within a Lot, as shown on the Plat, within which there are limitations on an Owner's right to disturb, change, impede, restrict or in any other way alter or use existing geologic or man-made features on the land, trees, conifers, scrub oak, or other identified plants or features in any such Limited Disturbance Area, and provisions for an Owner's affirmative duty to protect Established Trees, as that term is defined in Section 3.3 (d). The limitations may be more particularly set forth in this Declaration, the Monte Cristo Subdivision Plat or its associated Plat, the Design Guidelines, or any other applicable document.

1.17. "Lot": A parcel or other division of land within the Monte Cristo Subdivision, shown on the Plat, including any amendments thereto, whether improved or unimproved, which may be separately owned, occupied and/or conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Subdivision Estate, together with the structures, if any, constructed thereon, as well as such Lot's allocated interest in common easements. The term shall not include Common Area real property, nor property dedicated to the public, nor shall it include Parcel A, Parcel B, nor any other property within the Subdivision which may be designated in the future as a "parcel". It is acknowledged that Lot 101 is intended and suitable for future subdivision into two single-family lots within the Monte Cristo Subdivision. However, unless and until any such subdivision is approved and the appropriate instrument has been filed in the Public Records, such property shall be deemed to be a single Lot.

1.18. "Member": A Person subject to membership in the Association pursuant to Section 4.2.

1.19. "Monte Cristo Subdivision Plat" (also referred to as the "Monte Cristo at La Caille Subdivision Plat"): A subdivision and land use plan which has been approved by

Sandy City of the state of Utah for the development of the Monte Cristo at LaCaille Subdivision, and which has been recorded in the official records of Salt Lake County, Utah, and all amendments, supplements, and referenced and associated documents and instruments thereto, as they may be amended from time to time.

1.20. “Monte Cristo Standard”: The standard of conduct, maintenance, or other activity generally prevailing within the La Caille™ Estate, described in part in Section 3.1 of this Declaration, as it may be further developed, defined and enhanced by the Board and/or Design Review Committee (“DRC”), and established within, and thereafter prevailing throughout the properties of the Monte Cristo at LaCaille Subdivision. Consistent with the foregoing, the Board of Directors of the Association may more specifically determine such standard.

1.21. “Subdivision Estate” or “Property”: The real property situated within the boundaries described on the Plat as divided into lots, parcels and streets, together with easements, as part of the Monte Cristo at LaCaille Subdivision, situated in Sandy City, Salt Lake County, Utah, and which property is more fully described on Exhibit “A”, attached hereto and incorporated herein by this reference, consisting (on this date) of 13 residential Lots, 2 separate non-Lot parcels, and common areas, together with any additional property which is subjected to this Declaration in accordance with Article VIII.

1.22. “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.23. “Mortgagee”: A beneficiary or holder of a Mortgage.

1.24. “Mortgagor”: Any Person who gives a Mortgage.

1.25. “Non-Disturbance Area”: An area or areas (such as, but not necessarily limited to, areas adjacent to Little Cottonwood Creek or a pond and slopes running to the creek or pond) designated on the Plat, within which a property owner shall have no right – except with the approval of the Design Review Committee or Board -- to disturb, change, impede, restrict or in any other way materially alter existing slopes, geologic or man-made features, native surface vegetation / groundcover, trees, shrubbery or other identified features and within which the Owner shall have a duty to protect all Established Trees (a term defined in Section 3.3 (d)) from harm during any construction activities. The restrictions and duties may, but need not necessarily, be more particularly set forth in this Declaration, the Monte Cristo Subdivision Plat or its associated Plat, or any other applicable document.

1.26. “Owner”: One or more Persons who hold the record title to any Lot, as evidenced in the official records of Salt Lake County, Utah, but excluding in all cases any party holding an interest merely as security for the performance of an obligation and, for the avoidance of doubt, excluding the title holders of Parcel A and Parcel B. If a Lot is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.27. “Person”: A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

1.28. “Plat”. The Monte Cristo at LaCaille Subdivision Plat.

1.29. “Post-Construction Storm Water Maintenance Agreement and Plan”: That certain Post-Construction Storm Water Maintenance Agreement dated on or about June 3, 2022 and approved on or about June 23, 2022, together with the Long-Term Stormwater Maintenance Plan, which are together attached hereto as Exhibit “D”.

1.30. “Public Records”: The public records of the state of Utah, Salt Lake County, Utah, and Sandy City, including but not limited to the records of the Salt Lake County Recorder.

1.31. “Reinvestment Fee”: A fee which may be due and payable to the Association upon and as a result of a transfer by an Owner of a Lot as provided in Section 9.7 of this Declaration; as may be permitted and governed by the Utah Code\*, as amended, provided, however, that any appropriate notice of such requirement has been recorded as required by law. [\* At the time of this Declaration, such provision is in Section 57-1-46 thereof.]

1.32. “Reserve Analysis”: An analysis to determine the need for, and the appropriate amount of, a reserve fund to accumulate money toward the estimated cost of repairing, replacing, and/or restoring each component of the Common Area that has a limited useful life and an estimated useful life of three years or more, and a remaining useful life of less than thirty years, but excluding any cost that can be reasonably funded from the general budget or other funds of the Association.

1.33. “Special Assessment”: Assessments levied in accordance with Section 9.5.

1.34. “Specific Assessment”: Assessments levied in accordance with Section 9.6.

1.35. “Supplemental Declaration”: An instrument, filed in the Public Records pursuant to Article VIII, which subjects additional property to or removes particular property from this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the real property described or referred to in such instrument.

1.36. “Use Restrictions and Rules”: The Use Restrictions and Rules (sometimes called the “Use Restrictions”) applicable to the Monte Cristo Subdivision promulgated and administered pursuant to this Declaration, as they may be amended from time to time.

1.37. “Utah Code”: The Utah Code Annotated, as it may be amended from time to time and as now or hereafter in effect.

1.38. “Walnut Pond”: The pond (so named for a walnut tree next to its location when the subdivision was recorded) within Lot # 101 as that Lot is designated on the Monte Cristo Subdivision Plat, which pond has been historically used and is designated for continuing use for and related to collection and retention of irrigation water for the La Caille™ Estate properties, pursuant to their respective water rights, and for storm water retention as and when needed, and which is the subject to a perpetual easement for the benefit of the La Caille™ Estate.

**Article II**  
**DECLARATION; PROPERTY RIGHTS**

2.1 The Declaration. (a) Declarant hereby declares that the Subdivision Estate and any and all Improvements that are at any time located upon any portion of the Subdivision Estate (except Parcel A) shall be developed and maintained according to the Monte Cristo Subdivision Plat and except for Parcel A and Parcel B, according to this Declaration, and except for Parcel A and Parcel B, held, sold, conveyed, transferred, designed, constructed, maintained, encumbered and occupied subject to the covenants, conditions and restrictions set forth in this Declaration. The properties in the Subdivision Estate (except Parcel A) shall be subject to the easements set forth in this Declaration, on the Plat, and/or in any other associated recorded instrument(s), which are expressly incorporated into this Declaration by this reference. Declarant expressly acknowledges and discloses that, among other easements, the Subdivision Estate is subject to the following easements:

(i) An access easement for ingress and egress for the benefit of the Owners, occupants, visitors, etc., of the Monte Cristo at LaCaille Subdivision, to and from the Subdivision Estate for emergency purposes extending to Quail Ridge Road on the other end, as more fully described in that easement instrument;

(ii) An access easement, hereby described, granted and reserved, for ingress and egress for the benefit of the owners, occupants, visitors, etc., of the various properties within the La Caille™ Estate to, from and over the subdivision’s private street, Quail Hill Lane, to and from the private drive on the La Caille™ Estate which connects thereto, for the purposes more fully described in that easement instrument;

(iii) As is acknowledged on the Monte Cristo Subdivision Plat in the “Easement Note”, and is more fully described, granted and reserved in the official records of the Salt Lake County Recorder – such as the disclosures in Entry No 1966010 in Book 2133, Page 253 and Entry No. 929611 in Book 311, Page 97 and Entry No. 2583469, in Book 3462, Page 292 of those official records, among others – the Subdivision Estate is affected by and subject to perpetual easements and rights of way, of and for the “South Despain Ditch Systems”, and which are for the benefit of the La Caille™ Estate properties, which easements run across, over and under the surface of the Subdivision Estate along and relating to the existing pipelines to convey irrigation and/or culinary water across the Subdivision Estate and deliver such water into to the Walnut Pond as noted in (iv) below; and further, for the avoidance of doubt, perpetual easements and rights of way along and over the existing pipelines, as referred to above, are hereby affirmed, granted and reserved to and for the benefit of the properties within the La Caille™ Estate, which easements and rights of way shall run with the land, and provide access, ingress and egress to,



and from, and within ten (10) feet on each side of the said pipelines for purposes of inspection, protection, repair, cleaning, treatment, replacement, and generally for all forms of use and maintenance of the said pipelines to the owners and representatives of the owners of the La Caille™ Estate properties;

(iv) As is acknowledged on the Monte Cristo Subdivision Plat and which is hereby described, granted and reserved, a perpetual exclusive easement for the primary benefit of the properties within the La Caille™ Estate, for access, ingress and egress to, from and around the “Walnut Pond” for purposes of construction, repair, inspection, protection, cleaning, treatment, replacement, and generally for all forms of use and maintenance of that pond and any associated water measurement devices, related in any way to irrigation water storage and to storm drainage retention purposes, and, subject to those rights and interests, an easement for the benefit of the Association for access, ingress and egress to, from and around the said “Walnut Pond”, as may be necessary or appropriate for purposes related to the fulfillment of its duties under this Declaration, and

(iv) The easements reserved in Section 6.1 (c) and Article XI, below.

This Declaration shall be binding on Declarant, its successors and assigns and except as provided herein, all parties having or acquiring any right, title or interest in and to any and all portions of the Subdivision Estate (except Parcel A), and the respective heirs, successors and assigns of such parties. (b) The name of the subject subdivision project is “Monte Cristo at LaCaille Subdivision”. (c) The “Monte Cristo at LaCaille Homeowners Association, Inc.” (or, if applicable, any successor thereto) shall serve as provided herein. (d) The Declarant reserves the right and option to expand the project or remove property from the project in accordance with Article VIII, among others, and applicable law. (e) The underlying project is not a cooperative, and does not contain or include condominiums which would be covered by Title 57, Chapter 8, Condominium Ownership Act, of the Utah Code. (f) This Declaration and all of the covenants, conditions, restrictions, easements and other provisions contained herein are intended to be, and shall constitute, covenants which shall run with the land and which shall be binding upon and shall inure to the benefit of Declarant, each respective Owner, each Occupant and any other party which has or may acquire any interest in a Lot of the Subdivision Estate. Any party that acquires an interest in any portion thereof, or which may occupy any portion thereof, shall be deemed to consent and agree to be bound by the Declaration and all of the covenants, conditions, restrictions, easements and other provisions herein contained. (g) Each acceptance of a deed or entrance into a contract of sale, or any other acceptance an Owner’s interest in a Lot within the subdivision shall constitute a simultaneous conveyance of the Lot in trust, with power of sale, to the trustee named herein or any successor trustee selected by the Board (as applicable, the “Trustee”) for the purpose of securing payment of all amounts which come due under this Declaration or law and in the event that any lien of the Association, such as pursuant to 9.8 below, is foreclosed. For those and all other applicable purposes, expressly including but not necessarily limited to those set forth in Section 57-8a-212(1)(j) of the Utah Code, Declarant hereby appoints Cottonwood Title Insurance Agency, Inc., and its successors and assigns to serve as the initial Trustee.

## 2.2 Changes to Lots and Lot Boundaries.

(a) Except as expressly reserved herein for Lot 101, no Lot within the Monte Cristo Subdivision, as subdivided according to the Monte Cristo Subdivision Plat (as it may be amended from time to time), shall be further subdivided or otherwise divided into two or more separate Lots, which may be subject to separate use or development. A right is expressly reserved to the Owner of Lot 101 to subdivide Lot 101 into two (2) Lots or into one (1) or two (2) Lots and/or a parcel. Each Lot created shall be subject to this Declaration. If so divided, the resulting Lots shall each be separate and independent of the other, as are all other Lots hereunder, and subject to the same rights, duties and responsibilities as apply to all other Lots hereunder. An option is expressly reserved to the Owner of Lot 101 to create a parcel involving Walnut Pond as part of a subdivision of Lot 101, which parcel shall be known as "Parcel C", for purposes including but not necessarily limited to collection and retention of irrigation water for the La Caille™ Estate properties, pursuant to their respective water rights, and storm water retention as and when needed. Unless removed and withdrawn from the Monte Cristo at LaCaille Subdivision, Parcel C shall be generally governed under this Declaration in the same manner as Parcels A and B.

(b) Subject to applicable laws and ordinances, and subject to the approval of the Board, an Owner of two or more adjacent, contiguous Lots of the Monte Cristo at LaCaille Subdivision may cause such Lots to be developed as one; provided that such development shall not affect assessments, which shall be made for the original number of Lots designated on the Plat. For the avoidance of doubt, if two Lots are developed as one, each of the Lots shall be subject to separate assessment notwithstanding the manner in which they are developed, and the Owner shall pay both.

(c) Notwithstanding anything in the foregoing, Declarant has the right, subject to applicable laws and ordinances, and the limitations below, but without the consent being required of any Owner or any Mortgagee; to relocate or otherwise reconfigure the boundary lines of any Lot or parcel, to eliminate Lots designated on the Plat, to create new Lots through the subdivision or reconfiguration of one or more existing Lots, to expand the project, to annex and subject to this Declaration all or any part of adjacent real property into the Monte Cristo at LaCaille Subdivision, to remove and release any part of the Subdivision Estate from the Plat and this Declaration, and to otherwise design and develop the Lots within the subdivision as Declarant shall determine. However, the rights in this 2.2 (c) shall be applicable only to (i) Lots or real property which are owned by Declarant or H2550 at the time of such adjustments and/or (ii) Lots or real properties owned by an Owner that has provided written consent to such change. In the event any such change is made to a Lot or real property in response to the request under 2.2 (c) (ii) by the owner of such Lot or real property, all costs, fees and expenses related to the change, including all associated professional (engineering, legal, etc.) fees and a reasonable administration and overhead fee for Declarant, shall be borne by and, if not promptly paid, may be specially assessed to the requesting property owner.

(d) Upon any reconfiguration of a Lot and/or real property, Declarant shall cause to be prepared and recorded an amendment to the Plat which shall set forth the boundaries of the reconfigured Lot and/or real property and if such reconfiguration is made in response to the request of an owner of such Lot or real property under 2.2 (c) (ii),

the expenses associated with amending the Plat, including a reasonable administration and overhead fee for the Declarant, shall be borne by and, if not promptly paid, may be specially assessed to the requesting owner. Except for the signature(s) of the Declarant and (if applicable) any non-Declarant Owner of a reconfigured Lot, no signature of any Mortgagee or any other Owner shall be required on any such amendment to the Plat.

2.3 Association. The Association shall do such things as are within its powers and as may reasonably be required to enforce and protect the interests of the Monte Cristo Subdivision in accordance with the Monte Cristo Subdivision Plat, and in relation to the Lots, parcels, easements and Common Areas governed by this Declaration.

2.4. Common Area. All land which is within the legal description of the Subdivision Estate and which is not designated on the Plat as part of a Lot or as Parcel A or Parcel B, or is not dedicated to Sandy City is Common Area. Every Owner shall have a right and nonexclusive easement of reasonable use, access, and enjoyment in and to the Common Area considering its intended purpose, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in the Plat or in any deed conveying such property to the Association, or in the Storm Water Plan and/or Storm Water Agreement (defined below, attached as Exhibit "D"), or in any Use Restrictions which may be promulgated as provided in this Declaration;
- (c) The right of the Board and the Association's Members, as applicable, to adopt rules regulating the use and enjoyment (including limitation thereof) of the Common Area, and/or to change, in its discretion, the manner of use, purpose or nature of any part of the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, and any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing pursuant to applicable provisions of the Bylaws;
- (e) The right of the Association, acting through the Board or its duly authorized officer(s), to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- (f) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot as permitted herein shall be deemed to have assigned all such rights to the lessee of such Lot.

2.5. No Judicial Partition of Common Area. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area, which is the subject of such partition action, has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property, which may or may not be subject to this Declaration.

2.6. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation, by the Board acting on the written direction of Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant and H2550, as long as the Declarant and/or H2550 owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

A. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, and if, in the reasonable discretion of the Board, it is desirable and appropriate to do so, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant and/or H2550, so long as the Declarant and/or H2550 owns any property described in Exhibit "A" of this Declaration, and Members representing at least 67% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.1(c) regarding funds for the repair of damage or destruction shall apply.

B. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the board shall determine.

2.7 Lot 101. At the time this Declaration is adopted, Lot 101 is owned by H2550 and there are certain improvements already on that Lot. Declarant expressly agrees that Lot 101 is intended and suitable for future subdivision into two Lots and/or into one or two Lots and a non-Lot parcel, although no such subdivision has yet been made. Unless and until Lot 101 is subdivided as contemplated in 2.2 (a) with a reservation of rights, and evidenced by recordation of a subdivision plat and/or Amendment to the Monte Cristo Subdivision Plat, Lot 101 shall be deemed and treated as a single Lot of the Monte Cristo at LaCaille Subdivision. Upon such subdivision, the two or more resulting subdivided Lots and/or non-Lot parcels shall be separate Lots and/or parcels of the subdivision governed by this Declaration, thereby increasing the number of Lots within the Subdivision Estate, and possibly the number of parcels. Until that time, or until its Owner otherwise develops Lot #101 with improvements approved by the Design Review Committee, the existing improvements on and uses of Lot 101 shall continue to be permitted and approved, notwithstanding any provisions, limitations or restrictions, such as but not limited to architectural standards, Design Guidelines or other provisions in this

Declaration or any other governing document to the contrary. Such permitted uses are expressly deemed "grandfathered" exceptions and permitted uses under this Declaration for Lot 101.

2.8. Parcels A and B. Parcels A and B are not Lots, nor are they part of the Common Area of the Monte Cristo at LaCaille Subdivision. Unless and until the use of either is changed from that described herein to a Lot, neither shall be subject to Assessments or levies.

- (a) Parcel A, on the Date of this Declaration is owned by Sandy, and is subject to certain provisions, reservations, rights and restrictions on the Plat. Parcel A is otherwise exempt from use restrictions set forth in this Declaration or the other governing documents.
- (b) Parcel B on the date of this Declaration is owned by Declarant. It is subject to certain provisions, reservations, rights and restrictions on the Plat, expressly including (but not limited to) those related to Limited Disturbance Area(s) and/or Non-Disturbance Area(s). Except for those, Parcel B is exempt from use restrictions set forth in this Declaration or the other governing documents. Declarant expressly reserves Parcel B for future use or conveyance in the sole discretion of Declarant. All proceeds of any sale, if applicable, shall be the property of Declarant.

2.9. After-Acquired Title. In the event that, as of the date of the recordation of this Declaration, Declarant, H2550 or Sandy was not or shall not be the holder of record or legal title to any portion of the Subdivision Estate which is attributed to them, then all of the applicable party's right, title and interest in such portion thereof, whether such right, title and interest shall arise by reason of a contract for deed or otherwise, shall be deemed to be equitable title, and such equitable title shall be deemed to be subject to and bound by this Declaration and all of its provisions. In the event that fee simple title to any portion of the Subdivision Estate shall become vested in Declarant at any time after the execution, delivery and/or recordation of this Declaration, then any such real property shall immediately and automatically, without the necessity of the execution, delivery or recordation of any other document or instrument, become subject to and bound by this Declaration and all of the covenants, conditions, restrictions and easements and other provisions contained herein.

2.10 Owner's Acknowledgement. All Owners and occupants of Lots are, by recordation of this Declaration, given notice that their rights and interests in their Lot are governed by the Plat, the Monte Cristo Subdivision Plat, this Declaration and other governing documents as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed or entering into a recording a contract of sale, acknowledges and agrees that the rights, interests, use, enjoyment and marketability of and related to their Lot are affected by all such governing documents.

### **Article III**

#### **PLAN OF DEVELOPMENT, USE RESTRICTIONS AND RULES**

3.1. Plan of Development; Applicability; Effect. Through this Declaration and the Monte Cristo Subdivision Plat, and related documents, Declarant establishes a general plan

of development for the Subdivision Estate (except Parcel A) with the intent to enhance the Owners' quality of life and collective interests, the aesthetics and environment within the Monte Cristo Subdivision, and the vitality of and sense of community within the Monte Cristo Subdivision, all consistent with the Monte Cristo Standard, which is intended to fit in and be cohesive with the standards associated with the groomed open-space appearance and architectural design which are generally associated with the neighboring La Caille™ Estate at the time this Declaration is made. For reference, but without limitation intended, the La Caille™ Estate is known as a beautiful, naturally protected, pleasingly peaceful pastoral estate, separated from the urban areas surrounding it, situated upon spacious, well-maintained grounds, featuring and surrounded by preserved natural grounds, vegetation and trees, brick roads, vineyards, a creek, ponds and visiting wildlife; within which custom and exclusive improvements inspired by traditional French architecture and design, or any similar design(s) approved by the DRC, or by the Declarant if the Administrative Control Period has not expired, have been and will be tastefully and harmoniously constructed. Nothing in the foregoing is intended to imply that the La Caille™ Estate may not change, and Declarant makes no representations or warranties that the La Caille™ Estate (which it does not own or control) will continue to maintained according to the referenced standards, or be used in the same manner as it is at the time this Declaration is made. It is intended that the cohesiveness with the La Caille™ Estate shall continue and may adapt as changes occur, so long as the beauty of the La Caille™ Estate is maintained. In the event that it is not so maintained, the Monte Cristo Standard shall continue to be determined according to the then-former standard. The plan of development shall be subject to the rights and authority of the Association to respond to and evolve with changes in circumstances, conditions, needs, and/or desires within the subdivision community and to adopt or make changes to rules designed to regulate and control the Area of Common Responsibility. The Subdivision Estate (except Parcel A) is subject to the land development, architectural, and design provisions set forth in this Declaration and the Design Guidelines which govern individual conduct and uses of or actions upon the Subdivision Estate, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration. The Subdivision Estate is subject to the laws governing its use, including Sandy City ordinances and regulations, including, pursuant to its notes on the Plat, the requirements relating to a sensitive overlay.

3.2. Permitted Use; Development of Lots; Construction of Improvements; Protection of Limited Disturbance Area(s) and/or Non-Disturbance Area(s). All Lots shall be used exclusively for residential purposes and used in a manner consistent with Declarant's intention that the Subdivision Estate be developed and used as a residential subdivision consistent with the Monte Cristo Standard. Such use shall be consistent with and subject to applicable zoning ordinances. Each such use shall be for a single-family residence, the exterior design of which shall be consistent and cohesive with traditional French architecture, or any similar design(s) approved by the Declarant if the Administrative Control Period has not expired, or by the DRC at any time, as may be more fully described in and governed by the Design Guidelines. Each Owner shall be responsible for the construction of all duly and lawfully approved and compliant residential structures, any accessory structures and owner-added Landscaping ("**Improvements**") on such Owner's Lot, other than those constructed or provided

by Declarant. Lot development shall conform to the requirements noted by Sandy City on the Monte Cristo Subdivision Plat, particularly including, but not limited to those relating to storm water retention and run-off. The location of structural Improvements shall be limited to the Building Envelope applicable to such Lot. There shall be no fences on any Lot, expressly including but not limited to boundary or perimeter fencing, other than fencing expressly approved by the DRC (i) for pet containment (such as a "dog run"), (ii) for safety (such as near the Little Cottonwood Creek), (iii) for a privacy area behind a house (such as for a back yard private patio), or (iv) for another reasonably similar purpose. In connection with any Lot development and at all times thereafter, the Owner shall protect and cause any Persons working on Owner's behalf to protect any Limited Disturbance Area(s) and/or Non-Disturbance Area(s) on or near the Lot, according to all applicable provisions in this Declaration, the Plat, the Design Guidelines, the instructions of the Design Review Committee, or any other document or instrument – and, subject to changes approved by the Declarant, DRC or Board, shall have a duty to protect all Established Trees in any such Area from harm during any construction activities by installing a temporary chain link fence around the drip edge of the tree's outer perimeter. Except as permitted by the DRC or the Board, or by the Declarant during the Administrative Control Period, or as appropriate for reasonable maintenance, trimming and/or cleaning, no Owner or occupant of any Lot shall materially disturb, change, impede, restrict or in any other way alter or use existing geologic or man-made features on the land, trees, conifers, scrub oak, or other identified plants or features, within any Limited Disturbance Area(s) and/or Non-Disturbance Area(s). The restrictions on disturbance are set forth on the Monte Cristo Subdivision Plat, and may be supplemented in other governing documents. Further, each Owner shall be responsible to pay the Lot's proportionate share of the repair, replacement and/or reconstruction of Improvements constructed in the Common Areas for which the Association has responsibility, in accordance with the provisions of this Declaration. No Improvements shall be constructed upon a Lot, nor shall there be any alteration or repainting of the exterior of any existing Building or other Improvement thereon unless and until complete plans and specifications therefor have first been submitted to and approved according to the Design Guidelines by the Design Review Committee which has been appointed and authorized pursuant to Section 10.2, below, or if for any reason the Design Review Committee is not then constituted, by the Board. Notwithstanding the provisions of the foregoing sentence, however, the consent of the Design Review Committee shall not be required for any repair or repainting of an existing Improvement, if upon completion of such repair, repainting or refurbishing, the Improvement shall be in compliance with plans and specifications previously approved by the Design Review Committee and continuing in effect for such Improvement. Approval from the Design Review Committee is not required for Improvements to be constructed by Declarant on Common Areas or Roadways. No temporary structures shall be permitted on any Lot; provided, however, that trailers, temporary construction offices, sheds and other similar temporary structures shall be permitted on a DRC approved portion of the subject Lot for construction purposes during the actual construction of the Improvements. Once commenced, construction of all Improvements shall be diligently prosecuted to completion. The Owner of the Lot on which Improvements are being constructed shall at all times keep the other Lots, the Common Areas and the Roadways contiguous to the Lot reasonably free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the Improvements.

3.2 (i). Covenants for Timely Development and Construction; Fines / Liquidated Damages. The Association, the Developer and the Owners share a common interest in timely completion of the development of the Monte Cristo at LaCaille Subdivision. Timely construction of Improvements on each Lot is integral to enjoyment by other Owners of their property, to public perception of the project and subdivision development, to maintenance of the Lots and Common Area, to the security of the Subdivision Estate, to marketing of other Lots, to retention of property values, and generally and ultimately to its current and future Members' enjoyment of the subdivision community. Therefore, after any Lot has been purchased from Declarant or H2550, construction of the home and its related improvements shall be substantially and materially commenced within eighteen (18) months of the date upon which that Lot Owner closes on the Lot. Further, once commenced, the Lot Owner shall have a duty to cause the construction of the Home/Improvements to be diligently pursued to completion, which completion shall be evidenced by a certificate of occupancy from Sandy City, and which certificate shall be obtained within thirty-six (36) months from commencement of construction, unless (A) completion within such time is delayed due to causes beyond the reasonable control of the Owner, such as by a force majeure, as determined in the sole discretion of the Design Review Committee, or of the Declarant if the Administrative Control Period has not expired, and (B) the time for completion is extended as determined in the sole discretion of the Design Review Committee, or of the Declarant if the Administrative Control Period has not expired. The Lot Owner shall be fully responsible for the actions, inactions and failures of its employees, contractors, agents and representatives, and therefore for compliance with these provisions. In the event that the Lot Owner fails to timely start and/or complete construction of improvements as provided herein, The Association and through it, the Declarant and Lot Owners will suffer significant administrative, marketing, public relations and other costs and suffer other associated losses and damages, including loss of property value compared to that which it would be with full compliance, the amount of which is extremely difficult if not impossible to determine. As a reasonable estimate and measure of such additional costs and associated losses and damages, the Board may assess, and a breaching Owner shall pay a fine representing liquidated and agreed damages to the Association as follows: If the Lot Owner has not commenced construction within eighteen (18) months of the date upon which that Lot Owner closes on the Lot, such Owner shall be liable for and pay to the Association a fine as liquidated and agreed damages in the amount of One Hundred Dollars (\$100.00) for each day until construction substantially commences and thereafter, if construction is paused, for each day that construction is not being diligently pursued as provided above. Furthermore, whether or not construction is timely commenced, if the Home/Improvements are not completed within 36-months from commencement of construction, the Board may assess, and the Lot Owner shall pay the Association a fine representing liquidated and agreed damages, in the amount of One Hundred Dollars (\$100.00) per day until the Certificate of Occupancy is obtained. Any fine(s) made under this section shall be governed by Section 57-8a-208 of the Utah Code Annotated, as it may be amended from time to time. Before assessing a fine, the Board shall give the Owner a written notice of the violation together with an opportunity to cure within no fewer than three (3) business days from the date of delivery, and which may notify the Owner that fines will be assessed without further notice until the violation is cured. Accordingly, this provision expressly authorizes and permits the Board to assess the fine(s), and to thereafter continue to assess additional, continuing and/or repeat fines, each in that amount, without additional or further



warning for each day that the breach continues or, if temporarily cured, is repeated as contemplated in Section 57-8a-208 (2)(c). Each fine shall be due and payable to the Association immediately, without further notice of any kind. For each day that any assessed fine(s) remain(s) unpaid, a late charge shall accrue thereon pursuant to Section 9.1 (b) of this Declaration, equal to the greater of thirty dollars (\$30.00) or five percent (5%) of the accrued unpaid fine(s) per day, plus interest on the unpaid amount shall accrue at the rate of eighteen percent (18%) per annum until paid, and, together with a right to recover all costs, expenses and attorney's fees incurred by the Association as a result, shall be a charge and continuing lien on the Lot. The acceptance of a payment of any such fine and late charges and interest, if applicable, hereunder shall not constitute a waiver by the Association of any default by an Owner, nor of any other right under this Declaration or any governing document. By purchasing a Lot subject to this Declaration an Owner covenants and agrees that the provisions in this section 3.2 (i) are reasonable and to be bound thereby.

### 3.3 Landscaping.

(a) Certain of the existing geologic and man-made features of the land, and mature trees and vegetation on the Subdivision Estate have been deemed to be important to the aesthetics and environment desired for the Subdivision Estate, and are subject to protection as provided in this Declaration and by law, including regulations of various federal, state and local governments, and have, by virtue of being within an area on the Plat marked as a Limited Disturbance Area or Non-Disturbance Area, been designated for retention and protection, as may be more particularly described on the Plat, in the Design Guidelines or the Monte Cristo Subdivision Plat, this Declaration or any other related document (together, the "**governing documents**"). It shall be the duty of each Owner before, during and after construction to in good faith retain, protect and maintain the land, trees and vegetation on their Lot which are within an area on the Plat marked as a Limited Disturbance Area or Non-Disturbance Area in accordance with the definitions of those terms, this Declaration and other governing documents, and the Monte Cristo Standard.

(b) Furthermore, Building Envelopes, requirements for or restrictions on grading of a Lot, and other protections have accordingly been established in the governing documents (particularly including, but not limited to, the notes and conditions of approval imposed by Sandy City on such Plat). Each Owner shall conform such Owner's use before, during and after construction to those grading and other protections.

(c) Notwithstanding such restrictions and requirements, upon approval of the Design Review Committee in its sole discretion, and if applicable under its ordinances and regulations, the consent of Sandy City, an Owner may be permitted to change the existing features, trees and/or vegetation.

(d) Each Owner shall have a duty to protect all trees ten years or older and/or fifteen feet in height or taller (herein called "**Established Trees**") in any such area from harm during any construction activities by installing a temporary chain link fence around

the drip edge of the tree's outer perimeter.

(e) Except for such retained landscaping, each Owner shall be responsible to cause Landscaping, as approved, to be otherwise planted or installed at such Owner's sole expense upon all portions of each Lot upon which no other Improvements have been constructed including, without limitation, those portions of a Lot which shall be subject to Easements granted pursuant to this Declaration or any other associated document. All Landscaping shall be so retained, planted, and installed pursuant to a Landscaping Plan which meets the Design Guidelines, and which has been submitted to and approved by the Design Review Committee, as applicable, prior to installation of the Landscaping; provided, however, that approval from the Design Review Committee for Landscaping to be planted or installed by Declarant on any portion of the Subdivision Estate, other than a Lot improved by the Declarant, is not required.

(f) No Owner shall be required to cause Landscaping to be planted or installed upon any Lot upon which no Improvements have been constructed; provided, however, that in the event that an Owner shall utilize only a portion of its Lot by the construction of limited Improvements, then the Owner may be required to landscape that portion of the Lot upon which Improvements are not constructed as part of the construction of such limited Improvements, all as determined by the Design Review Committee in its sole discretion.

(g) Each Owner shall be required to keep such Owner's Lot free from rubbish, debris, fire hazards, environmental hazards, or any unsanitary, unsightly or offensive condition, and to conduct such weed abatement, rubbish and debris removal and other maintenance as shall be required to cause said Lot to be maintained in compliance with the Monte Cristo Standard, as the same may be established by the Association.

3.4 Maintenance of Improvements and Landscaping. As more fully provided in this Declaration, all Improvements located upon a Lot shall be continuously maintained by its Owner at such Owner's sole cost and expense so as to preserve a well-kept appearance consistent with the consistent with the Monte Cristo Standard. The Owner responsibilities include, but are not limited to watering, weeding, gardening, fertilizing, bug and/or pest treatment, and other lawn and landscape care. The Association shall likewise maintain, and no Owner shall interfere with the Association's maintenance of, all Landscaping in its area of responsibility, as set forth in 6.1(a) of this Declaration (the "HOA-Maintained Landscaping" as that term is more fully defined in Section 6.1(b), below) and the Landscaping on the Common Areas within its area of responsibility. Such landscape maintenance by the Association, however, shall not relieve Owner of Owner's responsibility for Landscape care, nor from repairs or replacements of any parts of the Landscaping on their Lot due to wear and tear, usage, breakage, or natural events, except damages caused by the gross negligence or other wrongful acts by or on behalf of the Association. Each Owner shall be required, at their sole cost and expense, to maintain their Lot in a clean, safe and orderly manner and to cause all weeds, rubbish and debris to be removed from their Lot. Each Owner shall be responsible for the exterior maintenance of any and all Buildings and any and all Improvements, including sidewalks, driveways, landscaping other than

the HOA-Maintained Landscaping, and private decorative features, if any, located on such Owners Lot. If the Association reasonably determines that the level of exterior maintenance on any Improvement located on an Owner's Lot or the maintenance thereon is unacceptable, the Association shall so notify the Owner in writing, and the Owner shall commence its work to correct the deficiencies within ten (10) days of receipt of such notice, and shall diligently continue such work thereafter to completion, provided that the correction of the deficiencies specified in such notice shall be completed within thirty (30) days after receipt of such notice. If the Owner fails to correct the stated deficiencies within that 30 day period, the Association may order the necessary work to be performed at the Owner's expense or the expense of the Association (subject to Specific Assessment) as applicable. The cost of such maintenance by the Association, including Owner's share of the costs of HOA-Maintained Landscaping maintenance, shall be assessed to the applicable Owner.

3.5 Prohibition on Short Term Rentals and External ADUs; Limitations on Occupation of Lots and Long Term Rentals. The Lots (and Improvements thereon) in the Monte Cristo Subdivision shall not be used for short term (thirty days or less) rent or leasehold, nor shall any external alternative dwelling unit ("ADU") be constructed, rented or otherwise occupied on any Lot. To the greatest extent permitted by law, renting or leasing of all or any portion of a Lot and/or the Improvements thereon for a term of thirty days or less is prohibited. Only Owners or permitted long term occupants/lessees and their respective non-paying (family and friends) guests shall be the occupants of Improvements on the Lots. Accordingly, the Lots (and Improvements thereon) in the Monte Cristo Subdivision shall not be used for long term (thirty days or more) rent or leasehold, or other occupation except by permitted long term occupants/lessees. For purposes of the foregoing, "permitted long term occupants/lessees" shall mean and refer to: (a) as for Owner person(s): members of the Owners' immediate families; (b) for Owner trusts: trustors or beneficiaries of Owner's trusts; and/or (c) for Owner entities: members, partners, shareholders or other equity holders of such entities. The restrictions in this Section 3.5 shall not apply to Lot #101, however, unless and until that Lot is subdivided. Upon such subdivision, all Lots shall be subject to this Section.

3.6. Authority to Promulgate Use Restrictions and Rules. Some use restrictions applicable to all of the Subdivision Estate (except Parcel A) are set forth in, or by reference (such as, but not necessarily limited to those in respect to the Storm Water Plan) incorporated into this Declaration. Subject to the terms of this Article, and/or to any other governing agreement or instrument, use restrictions and rules may be adopted, modified in whole or in part, repealed or expanded as follows:

(a) During the Administrative Control Period, subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt use restrictions and/or rules which add to, modify, cancel, limit, create exceptions to, or expand the then-existing use restrictions. The Board shall send notice by mail to all Owners, describing, with reasonable specificity any such proposed action, at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The approval of the Declarant shall be

obtained before any such action becomes effective.

(b) After the Administrative Control Period, subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may recommend to the Members the adoption of use restrictions and/or rules which add to, modify, cancel, limit, create exceptions to, or expand then-existing use restrictions. The Board shall send notice of its recommendation by mail to all Owners, describing with reasonable specificity any such proposed action, together with notice of a meeting of the Members as provided in the Bylaws at which such action shall be considered. The Members, by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any, at a meeting duly called for such purpose as provided in the Bylaws, may adopt use restrictions and/or rules which add to, modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

(e) Notwithstanding anything in the foregoing, a right to exempt the Declarant from Association rules and rule-making procedures is reserved to the Declarant until the termination of the Administrative Control Period.

3.7. Restrictions on Use of "Walnut Pond". The "Walnut Pond" is the subject of the easement noted on the Monte Cristo Subdivision Plat and more fully described in this Declaration for uses related to irrigation water and storm water retention, and the subject of certain rights set forth in 2.2(a), among others. As a purpose which is subservient and subject to those rights and uses, and so long as it is within the Monte Cristo at LaCaille Subdivision, the "Walnut Pond" may add to aesthetics within the subdivision, providing some visual harmony with the La Caille™ Estate (at least as it exists as of the time of adoption of this Declaration). Nothing in its designation for use for irrigation and storm water retention purposes shall imply that it may be used for any other purpose, such as, but not necessarily limited to wading, swimming, fishing, ice skating, or any other recreational activity. No such use shall be permitted without the expressed written consent granted by a 67% vote of the Board.

3.8. Restrictions on Structures, Items in Public View, Recreational Vehicles and Equipment, Etc. Except as may be permitted during construction of the improvements as provided in this Declaration -- at no time shall any temporary or permanent structure or shed, or

any trailer, recreational vehicle or recreational equipment, or other item of equipment or property be permitted to be kept on a Lot or on any Common Area, except behind the front setback of the owner's Lot and shielded from view in a manner approved by the DRC. The Board may adopt additional use restrictions and/or rules designed to protect the aesthetics and safety of the Subdivision. The foregoing exception for construction may be further restricted by rules promulgated by the Board or Owners for the benefit of the Association and its Members. Notwithstanding the foregoing, a trailer or recreational vehicle may be temporarily parked and remain on the portion of the private street which is contiguous to the subject Lot, but only for up to, but no more than, twenty four (24) consecutive hours and no more often than one time during any calendar week.

3.9 Private Street Use; Parking Restrictions.

(a) No private street within the Subdivision shall be used in a manner that will cause excess wear and tear upon the roadway and its structure. No Owner shall use any such private street in a manner which materially interferes with the rights of others. A private street within the Subdivision may be used for appropriate conveyance of construction vehicles in connection with construction upon a Lot; provided however that in no event shall the gross weight of any vehicle using such private street exceed that of normal residential construction-based vehicles, including cranes.

(b) No vehicles of any kind shall be parked on any private street or roadway in the Subdivision for more than twenty-four (24) consecutive hours. Trailers and recreational vehicles are further restricted in 3.8, above. Furthermore, no vehicles shall be parked anywhere on a private street in the Subdivision between November 1 and March 31: (a) at any time during "night" hours, that is between 8:00 pm and 7:00 am, nor (b) at any time when there is accumulated snow or ice, or when snow removal and ice abatement is reasonably possible in the Subdivision. Owners shall be prepared to -- and shall -- promptly remove any vehicle(s) parked on a private street in the Subdivision during "day" hours, that is between 8:00 am and 8:00 pm, in the event conditions or circumstances suggest snow removal and/or ice abatement may become possible. Further, in the event it may become, for any reason, at any time, unsafe for vehicle(s) to be parked on a Subdivision private street, the Association may restrict parking for a defined time period, and require any vehicles then parked to be moved from such road.

3.10. Pets. Owners may keep such domesticated pets as may be permitted from time to time under and subject to the ordinances of Sandy City. For safety and the common enjoyment within the Subdivision, Owners shall keep any and all pets in the residence or in an enclosed/fenced area which has been approved by the DRC, and otherwise on leash. Owners shall also comply with the provisions regarding pet control in the Maintenance sections in Article VI of this Declaration.

3.11. Rubbish, Trash and Other Waste. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary

container as specified by the Association or within a trash enclosure screened from the public view and approved by the DRC. All such waste and garbage must be promptly and periodically removed.

3.12 Owner's Acknowledgment. All Owners and occupants of Lots are, by recordation of this Declaration, given notice that use of their Lot is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of their Lot can be affected thereby, and that the Use Restrictions and Rules may change from time to time.

3.13 Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Lots shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including size and design criteria) for the purpose of maintaining the Monte Cristo Standard and/or minimizing damage and disturbance to other Owners and occupants of Lots.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of maintaining the Monte Cristo Standard and/or minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. Household composition shall at all times be in compliance with the applicable ordinances and regulations, zoning and otherwise, of Sandy City, Utah. No rule shall otherwise interfere with the freedom of occupants of Lots to determine the composition of their households.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that unreasonably burden the Common Area and/or Roadways, that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or allocation of rights to use the Common Area, in either case to the detriment of any Owner over that Owner's reasonable objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available or the nature or designated purpose of any Common Area; or from adopting generally applicable rules for use of Common Area; or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments.

(g) Alienation. No rule shall prohibit transfer of any Lot, or require consent of the Association or Board for transfer of any Lot. Nothing in the foregoing shall affect the right of the Association to enforce a covenant and/or rule which would obligate a future buyer or seller of a Lot to pay a Reinvestment Fee upon and as a result to the transfer of a Lot.

(h) Declarant's Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Subdivision Estate during the Administrative Control Period.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Lots to dispose of personal property which they maintained in or on the Lot prior to the effective date of such rule, or to vacate a Lot in which they resided prior to the effective date of such rule, and such property was maintained and/or such occupancy was then in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Lot.

The limitations in this Section 3.13 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

3.14 Environmental Restriction. Each Lot shall be used and occupied in compliance with all environmental laws which may now or which may in the future be applicable to such Lot, including without limitation all present and future federal, state and local judicial decisions, orders, decrees, laws, statutes, rules, rulings, regulations, permits, certificates, codes or ordinances of any governmental authority having jurisdiction over the Property, including, without limitation, the Utah Environmental Quality Code, Title 19, Utah Code; the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 USC 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 USC 6901 *et seq.*; the Toxic Substances Control Act ("TSCA"), 15 USC 2601 *et seq.*; the Clean Air Act, 42 USC 7401 *et seq.*; the Federal Water Pollution Control Act ("Clean Water Act"), 33 USC 1251 *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*; the Hazardous Material Transportation Act, 49 USC 5101 *et seq.*; the Atomic Energy Act, 42 USC 2011 *et seq.*; any so-called "Superfund" or "Superlien" law; and the rules, rulings, regulations, decisions and publication promulgated pursuant to said laws, all as may be amended from time to time (collectively, the "Environmental Laws"). Notwithstanding any standard set forth in the

Environmental Laws, in no event shall any Lot be used for any activity which will generate reportable quantities of hazardous wastes, or which will store, treat or dispose of hazardous wastes. The terms used in the foregoing shall have the same meanings as those defined and/or established in the referenced Environmental Laws or regulations promulgated thereunder.

**Article IV**  
**MEMBERSHIP AND VOTING RIGHTS**

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Monte Cristo Subdivision' Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Monte Cristo Subdivision as the Board or the membership may promulgate for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and the laws of the State of Utah.

4.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership subject to reasonable Board regulation and the restrictions on voting set forth in Section 4.4 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, manager, member, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

4.3. Term of Administrative Control Period. The Administrative Control Period shall continue until the first to occur of the following:

(a) ninety (90) days after 100% of the Lots have been conveyed to Owners other than a Declarant or H2550, and have been issued building permits for construction of residential structures approved by the Declarant, Board of Directors or Design Review Committee;

(b) ten (10) years after the Declarant and H2550 have both ceased to offer Lots for sale in the ordinary course of business; or

(c) the day the Declarant – with the written consent of H2550 if it has not conveyed its Lot(s) to Owner(s) other than Declarant – records an instrument voluntarily surrendering all of its rights as a declarant under the Administrative Control Period and notifies the Owners thereof.

4.4. Voting. The Association shall have two classes of membership, Class "A" Member and Class "B" Member.



(a) Class "A" Member: Class "A" Members shall be all Members except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot (a "Class "A" vote") in which they hold the interest required for membership under Section 4.2; provided, however, that there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and notify the Secretary of the Association in writing prior to the vote being taken. Absent such notice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B" Member: The "Class "B" Member" shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" Member may appoint the members of the Board of Directors during the Administrative Control Period. That right to appoint may be more fully described in the Bylaws. Furthermore, in a meeting of the Members of the Association, the Class "B" Member shall be entitled to three (3) votes for each Lot in which such Class "B" Member holds an ownership interest, whether or not such Lot is exempt from assessment. During the two years which immediately follow termination of the Administrative Control Period, the Class "B" Member shall be notified in writing of and have a right to disapprove actions of the Board and committees, expressly including those of the Design Review Committee, which right may be more fully described in the Bylaws. The Class "B" Membership shall terminate two years after expiration of the Administrative Control Period, as established in and governed by this Declaration and/or the Bylaws, unless the Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records. In the event of an early termination of the Administrative Control Period, Declarant may, consistent with the Utah Code, require the Declarant's expressed approval of any actions of the Board and committees, such as by not limited to the Design Review Committee. Upon termination of the Class "B" Membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which the Declarant owns.

## **Article V**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

5.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (expressly including, without limitation, private streets, sidewalks, pathways, landscaping, fencing, retaining walls, storm drainage areas, ponds, etc., and all furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and keep such Common Area and improvements in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Monte Cristo Standard.

5.2. Contracted Services Authorized. The Association is specifically authorized and required to retain or employ qualified professional private management to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws. In the discretion of the Board, such private management may be performed by Declarant, or by an entity affiliated or associated with Declarant. Notwithstanding the foregoing requirement to employ, if the employed management is terminated for any reason, the Board and officers shall make their best efforts to find a suitable replacement as soon as is reasonably practical. In that event, the Association, as directed by the Board, shall make its best efforts to serve in that capacity until another qualified professional management service provider is retained or employed. The cost of the foregoing shall be a Common Expense.

5.3. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of this Declaration and the Bylaws. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, such as, but not necessarily limited to those located within or associated with the real properties described in Exhibit "A", as well as personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, and, where rights for the general public may be provided for, for such benefit to the public, in each case subject to any easements (including without limitation, conservation easements) reserved, and to any restrictions set forth in the deed or other instrument transferring such property to the Association, and to the provisions of this Declaration, the Bylaws, and any rules of the Association.

5.4. Enforcement. The Association may impose sanctions for any violations of this Declaration, any applicable Supplemental Declaration, the Bylaws, Association rules, or any other governing document(s), in accordance with procedures set forth in the Bylaws, including but not necessarily limited to reasonable monetary fines pursuant to Section 57-8a-208 of the Utah Code annotated, as it may be amended, and charges for administrative and overhead costs, and professional fees, resulting from, incurred due to, or arising in any way out of the subject violation(s), and suspension of any rights which may be suspended under applicable law, including but not limited to the rights to vote, to use Common Areas, and/or to receive any utility service which is part of the common expenses paid for out of assessments. In addition, in accordance with applicable provisions of the Bylaws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or of Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, reasonable attorney's fees and court costs incurred in such action.

5.5. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate such right or privilege. Except as otherwise specifically

provided in this Declaration, in the Bylaws, in the Articles, or by law, all rights and powers of the Association may be exercised by or (such as actions by the Design Review Committee) on behalf of the Board without a vote of the membership.

5.6. Limitations on Liability; Indemnification. The officers, directors, committee members and Association-employed private management shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual gross negligence or willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken (expressly including services provided) in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association and accordingly share therein). The Association shall indemnify and forever hold each such officer, director, committee member and Association-employed private management harmless from any and all liability to others on account of any such contract, commitment or action; and against all damages and expenses, including legal fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Utah law. The foregoing rights to indemnification shall not be exclusive of any other rights to which any present or former officer, director, committee member or Association-employed private management may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.7. Dedication of Common Areas. The Association, by super majority votes of sixty-seven percent (67%) of the Class "A" members and, if during the Administrative Control Period, approval of the Class "B" Member, at a special meeting of Members duly called by notice which sets forth in reasonable detail the proposed dedication, may dedicate portions of the Common Areas to Sandy City, to Salt Lake County, Utah or to any other local, state or federal governmental or quasi-governmental entity subject, in addition to the foregoing, to such approval as may be required by this Declaration, the Bylaws or Law.

5.8. Security. The Association may, in its reasonable discretion, but shall not be obligated to, maintain or support certain systems, devices or actions within the Monte Cristo Subdivision designed to make the Monte Cristo Subdivision safer than they otherwise might be. None of the Association, the original Declarant, any successor Declarant, nor Association-employed private management shall in any way be considered insurers or guarantors of security within the Monte Cristo Subdivision, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of any failure or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and covenants to inform all occupants of its Lot that the Association, its Board of Directors and committees, Association-employed private management, Declarant, and any successor Declarant are not insurers and that each person using the properties assumes all risks of personal injury and loss or damage to property, including the contents of dwellings or other structures, and/or Landscaping, resulting from acts of third parties.

**Article VI**  
**MAINTENANCE**

6.1. Association's Responsibility. The Association shall, consistent with Section 5.2 of this Declaration (i) hire private management to perform its administrative management duties, and (ii) hire an independent landscape maintenance contractor to perform the Association's Landscaping maintenance obligations, such as those described in Section 6.1 (b); each of which shall serve in accordance with and subject to authority and/or limitations established by the Board. The Association's responsibilities shall include, but are not necessarily limited to the following:

(a) The Association shall cause the Association-employed private management to [and if such private management is not available for any reason, then the Association shall directly] maintain and keep in good repair the Area of Common Responsibility, which may include, but need not be limited to:

(i) all Landscaping and other flora, any secondary water system, community signage, lighting, and equipment, fences, walls, and other structures and improvements, including roads, parking areas, sidewalks, paths and trails situated upon the Common Area;

(ii) a sanitary sewer system as contemplated in the plan for residential development;

(ii) Landscaping and signage within public rights-of-way or designated easements within the Subdivision Estate, except to the extent that such responsibility is assigned to Owners in this Declaration;

(iii) ponds (subject to the easement rights acknowledged herein), streams and/or wetlands and storm water delivery systems (as set forth on the Monte Cristo Subdivision Plat) located within the Subdivision Estate which serve as part of the drainage and storm water retention system for the Subdivision Estate, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein; and

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

(b) In the interest of maintaining an open, flowing landscape throughout the Subdivision Estate (except Parcel A), the Association shall cause its landscape maintenance contractor(s) to mow and trim lawn landscaping, and perform such other related basic maintenance as it may agree from time to time, on all "HOA-Maintained Landscaping" (meaning and referring to (i) all lawn portions of the Landscaping surrounding the residential structure other than trees, shrubs, gardens, and other plantings or other exempt landscaping features and any particularly described areas, such as fenced in back yard areas to which Owner has been permitted by the DRC or Board to restrict access for HOA maintenance\*, and (ii) the Non-Disturbance Areas and Limited Disturbance Areas) on all of the Lots, in order to provide for and maintain a consistent appearance and the Monte Cristo Standard. Such landscape maintenance by the Association, however, shall not relieve Owner of Owner's responsibility for repairs or replacements of under Section 3.4, above. The Association shall not, and the Owner shall be responsible, however, for mow strips, planting, watering, weeding, gardening, tree and shrubbery trimming, fertilizing, bug or pest treatment, or other lawn, garden and landscape care. The Association may maintain other property within the Subdivision Estate which it does not own, including, without limitation, property dedicated to the public, if bound to do so by contract or covenant, or if the Board of Directors or the Board-employed private management determines that such maintenance is necessary or desirable, and appropriate for the benefit of the Subdivision Estate, to maintain the Monte Cristo Standard on such property, and the owner of such property consents. Such other property may include the Non-Disturbance Areas and Limited Disturbance Areas on Parcel B, if necessary. [\*Examples of such restricted access areas would include a private fenced-in patio or dog run area, with or without a locked gate, or a clearly identifiable "invisible fenced" dog area.]

(c) There are hereby reserved to the Association easements over, and to the degree it may be necessary, under the surface of the Subdivision Estate as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary to perform required maintenance or repairs (as determined in the sole discretion of the Board or the Association-employed private management) – unless Members representing 67% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibit "A" of this Declaration.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

6.2. Owner's Responsibility. As provided in 3.4, among other sections, each Owner shall maintain their Lot, all structures, parking areas, and other Improvements comprising the Lot in a manner consistent with the Monte Cristo Standard and all applicable covenants, and except as provided in 6.1, above, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, or any Supplemental Declaration or other covenants applicable to such Lot. Each Owner shall have a duty to facilitate and clear the way for the Association and its representative to perform its maintenance on the HOA-Maintained Landscaping. In particular, but without limitation, an Owner of an aggressive dog or other animal shall restrain the dog/animal and/or remove it from the subject area during any time(s) such maintenance is performed. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibilities, a violation shall have occurred and the Association may perform or cause to be performed such maintenance responsibilities and by specific assessment under 9.6, assess all costs incurred by the Association against the Lot and the Owner in accordance with the provisions of this Declaration, including but not limited to Sections 5.4 and 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to any entry, except when such entry is required due to an emergency situation.

6.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Monte Cristo Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of, property which it does not own except to the extent that it has been materially negligent in the performance of its maintenance responsibilities.

## **Article VII** **INSURANCE AND CASUALTY LOSSES**

### 7.1. Association Insurance.

(a) Required Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available;

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility against all risks of physical loss which are commonly insured against, including fire and extended coverage perils, to the extent of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring – but shall not have a duty to insure -- any property for which it has maintenance or repair

responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of insured improvements;

(ii). Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf if generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least Two Million Dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits which a reasonably prudent person would obtain be available at reasonable cost, or should there have been a material change in circumstances of which the Board is informed and due to which a reasonably prudent person would obtain additional coverage or higher limits, the Association may, in the business judgment of the Board, elect to obtain such additional coverage or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance, and/or building ordinance coverage.

(b) Policy Requirements.

(i) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Salt Lake County, Utah area.

(ii) All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association at the request of such Member.

(iii) The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.1(a). In the event of an

insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductibility against such Owner(s) and their Lots pursuant to Section 9.6.

(iv) All insurance coverage obtained by the Board shall:

(A) Be written with a company authorized to do business in the State of Utah which satisfies the requirements of such federal secondary mortgage market agency or agencies as the Board deems appropriate in its reasonable business judgment;

(B) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(C) Not be brought into contribution with insurance purchased by Owners, occupants or their Mortgagees individually;

(D) Contain an inflation guard endorsement; and

(E) Include an agreed amount endorsement, if the policy contains a co-insurance clause.

(v) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insured and provide;

(A) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents and guests;

(B) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(C) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(D) An endorsement requiring at least 30 days' prior written notice to the Association and any additional insured of any cancellation, substantial modification, or non-renewal;

(E) A cross liability provision; and

(F) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction.

(i) Immediately after damage or destruction to all or any part of the property within the Monte Cristo Subdivision covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims



and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Area shall be repaired or reconstructed within 60 days (subject to iii, below) unless the Members representing at least 67% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

(iii) If the repair or reconstruction is one which, under the circumstances, cannot reasonably be completed within 60 days, then the repair or reconstruction shall be promptly commenced within that period and diligently prosecuted to completion. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. It shall be the obligation of the Owner to cause any such reconstruction to be diligently prosecuted and completed subject to the time frames recited herein pursuant to this section 7.1 (c) (iii) and, otherwise, to the provisions of Sections 3.2 (i) above, expressly including the provisions for liquidated damages in the event of any failure to timely perform.

(iv) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Monte Cristo Standard.

(v) Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of the Mortgagees and may be enforced by the Mortgagee of any affected Lot.

(vi) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

7.2. Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on Owner's Lot, the Owner shall proceed promptly to repair or reconstruct in a manner consistent with the original construction or such other plans and

specifications as are approved in accordance with Article X hereof. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Monte Cristo Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

**Article VIII**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation Without Approval of Membership. Until termination of the Administrative Control Period, Declarant may from time to time unilaterally subject to the provisions of this Declaration, if permitted by law, and subject to approval by Sandy City, Parcel A and/or any, up to all, of the parcels of land which are contiguous with and immediately adjacent to the Subdivision Estate. Subject to approval by Sandy City, the Declarant shall have the rights to add any contiguous parcel or portion thereof to any Lot, and/or, pursuant to 8.3, below, to withdraw any portion from any Lot and/or split any parcel within the annexed property into two or more Lots, notwithstanding any other provisions of this Declaration. In the event of any such split, the Lots created thereby shall each be treated in all respects from that time forward as separate Lots hereunder. In the event of any change to Lot boundaries pursuant to the foregoing, or 8.3, below, the affected Lot(s) shall be treated in all respects from that time forward as having the amended boundaries. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed, and, as appropriate, filing an amended Plat. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the parcels contiguous thereto, in any manner whatsoever.

8.2 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon execution thereof according to the foregoing and filing unless otherwise provided therein.

8.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 8.1, for the

purpose of removing any portion of the Subdivision Estate from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Monte Cristo at LaCaille Subdivision. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

8.4 Additional Covenants and Easements. The Declarant may subject any portion of the Subdivision Estate to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

8.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A".

## **Article IX** **ASSESSMENTS**

### 9.1 Creation of Assessments.

(a) There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 9.5; and (c) Specific Assessments as described in Section 9.6. There is also created a right for the Association to adopt a covenant or restriction by which each future buyer of a Lot shall be obligated to pay a Reinvestment Fee upon a transfer of the Lot. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Subdivision Estate (except Parcel A), is deemed to covenant and agree to pay these assessments and Reinvestment Fee(s) to the Association.

(b) All assessments, together with interest (at a rate established by the Board, not to exceed 18% or the highest rate allowed by Utah law, if less than 18%) as computed from the date the delinquency first occurs, plus a late charge equal to the greater of \$30.00 or 5% of the principal amount past due, per day, plus costs and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 9.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

(c) The Association or its designee shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting General Assessments or installments thereof in advance from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a history (meaning two or more times in any period of twelve consecutive months within the next preceding three years) of being untimely in the payment of assessments.

(e) No Owner may exempt himself from liability for assessments by non-use of the Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. Among co-Owners, the obligation is joint and several. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required or it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

9.2. Declarant's Obligation for Assessments. During the Administrative Control Period, Declarant and/or H2550 may annually elect either to pay General and Special Assessments on any of its/their unsold Lots which are subject to assessment under Section 9.8 in the same manner as any other Owner, or to pay the difference obtained by subtracting (a) the total amount of assessments levied on all other Lots subject to assessment from (b) the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Such obligations may be satisfied in the form of cash or by credit for "in kind" contributions of services or materials by the Declarant, or by a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other Personnel for payment of Common Expenses.

9.3. Computation of General Assessment.

(a) At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared pursuant to Section 9.4.

(b) General Assessments shall be levied equally on all Lots subject to assessment under Section 9.8, except that the General Assessment on Lot #111 shall be reduced in an amount sufficient (as determined by the Board in its reasonable discretion) to cause all other Lots to bear the expenses associated with maintenance of and snow removal from the private road, and associated with garbage collection, due to the facts that Lot #111 is designed to be accessed from a dedicated street maintained by Sandy City and its garbage pick-up service is provided by Sandy City. After making such adjustments, the General Assessments shall be set at levels which are reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves.

(c) In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Lots subject to assessment under Section 9.8 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

(d) So long as the Declarant owns any property subject to this Declaration, the Declarant may, but shall not be obligated to reduce the General Assessment for any fiscal year by payment of a subsidy, which may be treated as either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(e) The Board shall send a copy of the budget and notice of the amounts of the General Assessment (including its calculation of the difference for Lot #111) for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. The notice shall be sent in the manner described for notices of meetings of Members, as provided in the Bylaws. Such budget and assessment shall become effective unless disapproved at a meeting by at least 67% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting to consider the budget unless a sufficient number of Members petition the Board as provided in the Bylaws, which petition must be

presented to the Board within twenty (20) days after the date upon which the last of such notices of assessments is deemed to have been delivered. If the Board fails for any reason to determine the budget for any year, or the budget is disapproved, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.4 Reserve Analysis, Budget and Capital Contribution. The Association shall cause the initial Reserve Analysis to be conducted no later than three years after termination of the Administrative Control Period; and thereafter to conduct a full Reserve Analysis no less frequently than every six (6) years, or fewer if required by Utah law. Furthermore, the Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years, or fewer if required by Utah law. The Reserve Analysis and updates shall project a minimum of 30 years into the future and include the elements and information described in applicable Utah law. The Association shall maintain a reserve fund based on the Reserve Analysis for the maintenance, repair and replacement of the Common Areas as determined by the Owners annually and which will be included in the reserve budget, as contemplated below. All such funds shall be segregated from other operating accounts to the extent required by Utah law, and to the extent such funds are not expended, they shall be retained as additional reserves. Beginning after the initial Reserve Analysis has been completed, the Board shall annually prepare a reserve budget which is prudent, considering the facts, circumstances and the most recent Reserve Analysis, including but not necessarily limited to the number and nature of the Association's replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution allocated for each Lot, in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by General Assessments over the budget period. The Association shall annually provide the Owners with a summary of the most recent Reserve Analysis and any updates. A complete copy thereof shall be provided to any Owner upon request. At the annual meeting or a special meeting of the Owners, the Owners shall be given an opportunity to discuss the Reserve Analysis and the reserves and to vote on the funding of the reserve fund. The minutes of the Association shall reflect such decisions. Consistent with Utah Code Section 57-8a-211 (7), or its successor, if any, within 45 days after adoption of the Association's annual budget, the Owners may, at a special meeting called by the Owners for the purpose of voting whether to veto the reserve fund line item, veto such item by a 51% vote of the voting interests in the Association. Notwithstanding anything to the contrary herein, the Declarant or the Board may unilaterally, without approval of any Owner or Mortgagee, amend this section to comply with future changes of applicable law.

9.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed Twenty-five Thousand Dollars (\$25,000.00) in any one fiscal year shall require the affirmative vote or written consent of Class "A" Members representing at least 51% of the total Class "A" votes, and the written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board,

may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Specific Assessments. The Board shall have the power to levy a Specific Assessment against any Lot or Lots for monetary fines authorized by this Declaration or the Bylaws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Lots within the Monte Cristo Subdivision, whether such expenses are incurred (a) upon request of the Owner of a Lot for specific items or services relating to the Lot, or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests. The Association may also levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Lot Owner and an opportunity for a hearing in accordance with the Bylaws. A Specific Assessment may include, in addition to costs / expenses incurred and fines, charges for administrative and overhead costs, and professional fees, resulting from, incurred due to, or arising in any way out of any violation of the Owner's duties under this Declaration, such as but not limited to those referred to in Sections 5.4 and 6.2 hereof.

9.7 Reinvestment Fee Due on Transfer of Lot. The Board is hereby authorized to adopt a covenant or restriction by which each future buyer of a Lot shall be obligated to pay a Reinvestment Fee upon a transfer of the Lot, in an amount determined by the Board. In no event, however, shall the fee exceed an amount equal to one-quarter of one percent (.25%) of the market value of the Lot transferred. In an "arms-length" transaction, there shall be a rebuttable presumption that the sales price is the market value. For the avoidance of doubt, the Lot value shall be determined including any improvements thereon. The obligation to pay the fee shall be a charge, burden and, if unpaid, continuing lien upon the subject Lot. Such fee shall be expressly dedicated to one or more of the purposes permitted under applicable law. The duration of the covenant may be determined by the Board. The covenant or restriction may be amended from time to time, In pursuit thereof, provided that a separate notice of reinvestment fee covenant is recorded as required by law with the county recorder by the Association, then each time legal title to a Lot passes from one Person to another, upon the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, the Reinvestment Fee described in and required by the applicable recorded notice. The following transfers shall not be subject to the Reinvestment Fee: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer to an Owner affiliated legal entity, such as (but not necessarily limited to) a limited liability company or a trust, such as for estate planning purposes, in which the Owner or the Owner's spouse, child or children, or parent(s) hold a beneficial interest of at least fifty-one percent (51%); (5) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (6) the transfer of a Lot owned by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the Lot, not to exceed two hundred fifty dollars (\$250.00).

9.8 Lien for Assessments; Remedies for Nonpayment.

(a) The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (i) any lien recorded before recordation of this Declaration, (ii) the liens of all real estate taxes, bonds, assessments, and other levies which by law would be superior, (iii) the lien or charge of any first or second Mortgage of record (meaning any recorded Mortgage with first or second priority over other Mortgages and recorded before recordation of the lien by the Association) made in good faith and for value, and (iv) the lien for other prior assessments or other charges of the Association. The Association's lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure. Any such foreclosure shall be conducted in accordance with the applicable provisions of the Utah Code.

(b) The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf (b) no assessment shall be levied on it; (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged against such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment including such acquiror, its successors and assigns.

9.9 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the first month following the conveyance of the Lot by the Declarant. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences on the Lot. Notwithstanding anything in the foregoing, (a) at the closing on any conveyance of a Lot by the Declarant to the first Owner of such Lot other than the Declarant (the "First Owner"), or (b) thereafter by Specific Assessment: the Declarant may require the First Owner to make a lump sum capital contribution into the reserve fund in an amount equal to the share of contributions allocated to that Lot in the reserve budget as of the applicable date, with respect both to amount and timing over the reserve budget period, determined under 9.4 above, to the end that such new Owner's contributions into the reserve fund, as budgeted over time for that Lot, begin on a standing equal to those of other Lot Owners,



as of the date of such closing.

9.10 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.11 Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area of the Association;
- (b) Parcel A and Parcel B, shown on the Plat and referenced in this Declaration, and, if created as contemplated in 2.2(a) of this Declaration, Parcel C, unless and until such time (if ever) as either/any such parcel is converted to one or more Lot(s) governed by this Declaration: and
- (c) Any property dedicated to and accepted by a governmental authority or public utility (except that utility easements across Lots shall not affect the Lot's liability for assessments).

## **Article X** **ARCHITECTURAL STANDARDS**

### 10.1. General.

(a) No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 10.3.

(b) Each dwelling structure shall be custom-designed, and approved by the Design Review Committee, in its discretion. No dwelling shall be a duplicated design of, or substantially similar to that of any other dwelling, whether approved for or existing on a Lot within the Monte Cristo Subdivision. The determinations relative to the foregoing shall be made in the sole discretion of the DRC, or if there is not one, the Board.

(c) Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(d) All dwellings and associated structures shall be constructed within the designated Building Envelope of the Lot, and shall be designed by and constructed in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Design Review Committee.

(e) Each Lot is subject to the drainage provisions set forth in this Declaration, the Monte Cristo Subdivision Plat or any associated document (expressly including governing documents which pertain to infrastructure improvements for Monte Cristo at LaCaille Subdivision). Among other things, each Lot shall be graded in a fashion to prevent water from passing from one Lot to another Lot without the consent of the Owner of the Lot to which such drainage occurs. Such consent shall be expressed in the form of an easement agreement between the Lot Owners.

(f) This Article X shall not apply to the activities of the Declarant or H2550 during Administrative Control Period, to activities of Sandy City in respect to Parcel A (unless and until the exemption for Parcel A from this Declaration is removed), nor to activities of the Association.

(g) This Article X may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

10.2. Architectural Review; Design Review Committee. The Design Review Committee, described below, is charged with, and shall have authority, subject to directives of the Board, for adoption and administration of the Design Guidelines, and review of all applications for construction and modifications, additions, or alterations made on or to existing structures on Lots and the adjacent open space under this Article shall be the responsibility of the Design Review Committee described below. If there is no Design Review Committee, the Board shall assume and perform all responsibilities of the Design Review Committee. The members of the Design Review Committee need not be Members of the Association nor representatives of Members; and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the actual costs incurred by the Design Review Committee in having any application reviewed by the Declarant or its representatives (during the Administrative Control Period) architects, engineers or other professionals. The Design Review Committee (sometimes, the "DRC" herein) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Subdivision Estate (except Parcel A). Until 100% of the Lots have been developed and conveyed to Owners other than Builder Owners, the Declarant retains the right to appoint all members of the DRC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, appoint the members of the DRC, who shall thereafter serve and

may be removed in the Board's discretion.

10.3. Guidelines and Procedures.

(a) Design Guidelines.

(i) The DRC shall adopt such Design Guidelines as it deems necessary and/or appropriate for the Monte Cristo Subdivision. The Design Guidelines may contain general provisions applicable to all of the Subdivision Estate (except Parcel A), as well as specific provisions which vary according to land use and from one portion of the Subdivision Estate to another depending upon the location, unique characteristics, and intended use. The Design Guidelines may be more-, but shall not be less- restrictive than the standards set forth in this Declaration and/or applicable law. The Design Guidelines are intended to provide guidance to Owners and Builder Owners regarding matters of particular concern to the Design Review Committee in considering applications hereunder. The Design Guidelines are not the exclusive basis for decision of the Design Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(ii) The DRC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has timely and substantially commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the DRC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

(iii) The DRC shall make the Design Guidelines available to Owners and Builder Owners who seek to engage in development or construction within the Monte Cristo Subdivision. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may be amended by the DRC from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(iv) The Design Review Committee may promulgate detailed procedures and standards governing modifications, additions, or alterations made on or to existing structures on Lots and the adjacent open space, consistent with those set forth in the Design Guidelines

(v) Notwithstanding the above, the DRC may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(vi) All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Design Review Committee, unless the DRC has granted a variance in writing pursuant to Section 10.5. So long as the DRC has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures.

(i) No activities within the scope of Section 10.1 shall commence on any portion of the Subdivision Estate until a complete application for approval of the proposed work has been submitted to and approved by the DRC. To be "complete" an application must be completed in all respects as determined by the DRC. Such application shall be submitted in the form designated and required by the Design Review Committee and shall include plans and specification ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors (including a color board), landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable, to permit review by the DRC. The Design Review Committee may require the submission of such additional information as it deems necessary to consider any application. An application which is complete and conforms to all of the foregoing is herein called a "complete submittal".

(ii) In reviewing each submission, the Design Review Committee may consider (but shall not be restricted to consideration of) the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, topography, finish grade elevation, and the effect and impact on the entire Subdivision Estate, among other things. Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Design Review Committee members change over time.

(iii) It shall be the responsibility of each applicant to make sure the DRC has a complete submittal. In the event that the DRC fails to approve or disapprove, in writing, any application within thirty days after its receipt of a complete submittal, plus all information and materials (if any) reasonably requested by the DRC, the applicant may notify the Design Review Committee by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within thirty days of the Design Review Committee's receipt of the Owner's notice, as evidenced by the return receipt, the application shall be deemed approved. A response shall be deemed to have been given when deposited in the U.S. Mail, certified mail, return receipt requested, properly

addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRC pursuant to Section 10.5.

(iv) Notwithstanding any other provision in this Declaration, in the event that construction does not commence on a project for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn and void, and it shall be necessary for the Owner to re-submit the Plans for reconsideration.

(v) All work shall be completed in accordance with, governed by and subject to the provisions of 3.2 (i) of this Declaration, within 36 months from commencement, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Design Review Committee.

(v) Each improvement shall be constructed according to, and in compliance with, the approved Plans, as well as with engineering architectural, building, and/or any other applicable codes, including municipal, state or federal laws, ordinances or regulations.

10.4 No Waiver of Future Approvals. Approval of any proposals, plans and specifications, and/or drawings for any work done or proposed, and/or in connection with any other matter requiring approval, shall not be deemed to constitute a binding precedent, nor a waiver of the right to withhold approval as to any similar proposal, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.5 Variance. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations indicate to the DRC that a variance is appropriate, but only in accordance with duly adopted resolutions. No Owner shall have a right to a variance. Such variances may only be granted, however, when, as determined in the sole discretion of the DRC, unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

10.6. Limitation of Liability. The standards and procedures established by this Article are intended to enhance the overall aesthetics of the Subdivision Estate and shall not create any duty to any Person. The DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Declarant, the Association,

the Board, the Design Review Committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Design Review Committee and its members shall be indemnified by the Association as provided in this Declaration and/ or the Bylaws.

#### 10.7 Enforcement.

(a) Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 10.5. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at four percent per annum above the "Reference Rate", may be assessed against the benefited Lot and collected as a Specific Assessment. The "Reference Rate shall mean and refer to the rate established and made public by Wells Fargo Bank, NA (and its successors and assigns, as applicable), used for pricing loans to its substantial commercial borrowers.

(b) Unless otherwise specified in writing by the Design Review Committee, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized (but shall have no obligation) -- after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws -- to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and Owner thereof as a Specific Assessment.

(c) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Monte Cristo Subdivision, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, directors nor other representatives shall be held liable to any Person for exercising the rights granted by this paragraph.

(d) In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC.

**Article XI**  
**OTHER EASEMENT PROVISIONS**

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Maintenance, Etc.

(a) There are hereby reserved to the Declarant, so long as either the Declarant or H2550 owns any property described on Exhibit "A" or "C" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Subdivision Estate (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating: Landscaping, cable television systems, any master television systems, cellular antenna, wired or wireless internet connection systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewer, telephone, gas, and electricity, and further including pressurized and gravity fed irrigation systems which may serve and shall cross over or under the Subdivision Estate for the benefit of some or all of the La Caille™ Estate, and utility meters for any of the foregoing; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on the recorded Plat of the Monte Cristo Subdivision. The easements designated on the Plat of the Monte Cristo Subdivision are hereby granted, affirmed, established and reserved for the purposes and benefit of the parties designated thereon. Declarant specifically grants to the local water supplier, electric company, and natural gas supplier and/or owners of parcels in the La Caille™ Estate easements across the Subdivision Estate for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, irrigation water systems, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant or H2550 owns any property described on Exhibit "A" or "C" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development and/or use of any property described on Exhibit "A".

(c) Any damage to a Lot resulting from the exercise of the easements

described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.3 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform management, control and maintenance or to otherwise exercise its rights and duties under or pursuant to this Declaration or any Supplemental Declaration, such as, but not limited to those acknowledged in Articles V and VI hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules. Such right may be exercised by any member of the Board, the appropriate officers, agents, contractors, professional representatives, employees and managers of the Association, and members of the Design Review Committee pursuant to Article X, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. In the case of performance of routine maintenance (such as of HOA-Maintained Landscaping), following an established routine or general schedule shall serve as notice to the Owner for purposes of the foregoing. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

## **Article XII** **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Monte Cristo Subdivision.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Subdivision Estate or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessment or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within 60 days; or



(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

12.2 No Priority Over First Mortgagee. The lien or claim against a Lot for unpaid assessments levied by the Association pursuant to this Declaration shall be subordinate to a first Mortgage affecting such Lot which has been recorded prior to the date such assessment became due. No provision of the Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

### **Article XIII** **DECLARANT'S RIGHTS**

13.1 Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 The Declarant and Builder Owners authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builder Owners shall have easements for access to and use of such facilities.

13.3 No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Monte Cristo Subdivision, without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

13.4 Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Administrative Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Monte Cristo Subdivision primarily for development and sale.

13.5 This Article may not be amended without the written consent of the Declarant.

13.6 The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all Lots have been sold and conveyed to Owners (including Builder Owners) or, in the alternative, all sales activity has ceased.

#### **ARTICLE XIV** **AREA STORM DRAINAGE**

14.1 Grading Plan. Declarant has established a general plan of development for the Subdivision Estate, which includes a grading plan required as noted on the Plat by Sandy City containing provisions applicable to each of the Lots within the Monte Cristo Subdivision. That grading plan is incorporated herein by this reference. The grading plan is designed to minimize storm drainage upon or into the Lots. Furthermore, the grading plan is designed to facilitate connection with the area storm drainage system whether pre-existing on or across, and/or installed as part of the improvements to, the Subdivision Estate by the Declarant. Declarant shall have no responsibility to cause the Lots to conform to such plan. It is the responsibility of the Lot Owner (including any Builder Owner) to submit to Sandy City a compliant grading plan, to obtain approval thereof, and, during construction, to cause or assure that their Lot complies in all respects to the city-approved grading plan and the provisions in and associated with the Monte Cristo Subdivision Plat.

14.2 Area Storm Drain System. As shown on the Plat, an area storm drainage system exists and/or may be further established. The improvements to the Lots shall be designed to cause drainage of water, including, without limitation, water from storms, secondary sprinkler, culinary or other sources of water, to pass from the Lot surface to the area storm drainage system. It is understood that the area storm drainage system shall be primarily used to drain storm water away from the basements of homes or other improvements.

14.3 Maintenance; Post-Construction Storm Water Maintenance Agreement and Plan. It shall be the obligation of the Association to maintain the storm water drain system. The area storm drainage system shall be part of the Area of Common Responsibility, the maintenance of which shall be a Common Expense. It is acknowledged that the development and use of the Property are governed in part by a Post-Construction Storm Water Maintenance Agreement (“**Storm Water Agreement**”) and associated Long-Term Stormwater Maintenance Plan (“**Stormwater Plan**”), copies of which are attached as Exhibit “D” and are expressly incorporated into this Declaration by this reference. Therefore, commencing upon Declarant’s substantial completion of the infrastructure as shown on the Plat, the duties related to use and maintenance of the Storm Water Facilities (as that term is defined in the Storm Water Agreement) and conforming to the Stormwater Plan shall be the responsibility of the Association, in its capacity as successor and assignee of the Property Owner (Declarant). No notice, agreement or writing of any kind shall be required to evidence such completion and the commencement of the Association’s duties. Each Owner shall at all times conform their

activities in all respects to the Storm Water Agreement and Stormwater Plan, as applicable.

14.4 Restrictions on Use of Area Land Drain. No Owner, member, occupant, tenant, guest or invitee of any Lot shall use the area storm drainage system for any use other than its designated purpose. No person, whomsoever, shall cause or permit any hazardous or other inappropriate substance to be introduced into the area storm drainage system or any drainage pond, nor in any other way violate the terms of the Storm Water Agreement and/or the Stormwater Plan.

14.5 Use Restrictions and Rules. It is expressly acknowledged that the provisions of this Declaration permitting the promulgation and enforcement of use restrictions and rules shall extend to the area storm drainage system.

## **Article XV** **GENERAL PROVISIONS**

### 15.1 Duration.

(a) Unless terminated as provided in Section 15.1(b), this Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall have a term equal to the maximum period permitted and continue to run with the land throughout that term. Thereafter, this Declaration shall be automatically renewed and extended for successive renewal periods of 20 years each, unless terminated as provided herein. Notwithstanding the foregoing, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities as applicable in Utah, then such provisions shall continue only for 999 years, or if the law is changed, until a date which is one year from the end of the then allowed period of time.

(b) Unless otherwise provided by Utah law, in which case such law shall control, this Declaration may not be terminated within the first fifty (50) years after the date of recording without the consent of all Lot Owners, H2550 and/or Declarant if they or either of them owns any portion of the Subdivision Estate. Thereafter, it may be terminated only by an instrument signed by Owners of at least 67% of the total Lots within the Monte Cristo Subdivision and the Declarant, if the Declarant owns any portion of the Subdivision Estate, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

15.2 Amendment. The Declarant may amend this Declaration if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only at a meeting duly called for that purpose by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 67% of the total

number of Lots within the Monte Cristo Subdivision and, so long as the Declarant owns any portion of the Subdivision Estate or has an option to subject additional property to this Declaration pursuant to Section 8.1, the written consent of the Declarant. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, (respectively or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. A procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of a majority of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens) and/or any rights or interests of the Association which directly or indirectly arise out of or relate to the provisions of this Declaration; (b) the imposition and collection of assessments as provided or permitted in this Declaration or any Supplemental Declaration for properties which include the Subdivision Estate, among others; (c) proceedings involving challenges to assessments or taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. Nothing herein shall limit the Association's right or authority to defend itself in any action commenced against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute legal proceedings as provided above.

15.5 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Monte Cristo Subdivision from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6 Use of the Words "Monte Cristo at LaCaille", "La Caille™", or "La Caille™ Center". Nothing in this Declaration or any related document or instrument is intended to grant, nor shall anything herein imply, a license or other consent, to any Person to use, and no Person shall use, the words "Monte Cristo at LaCaille", "La Caille™", or "La Caille™ Center",

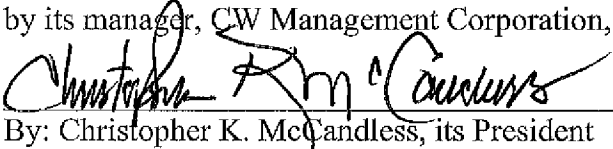
or any derivative of any of the foregoing, in any printed or promotional material without the Declarant's prior written consent during the Administrative Control Period, and, thereafter, without the consent of the Association and/or a license from the owner of the La Caille™ trademark. (It is disclosed that the Declarant holds a limited perpetual license to use the trademark, and does not own any interest in the La Caille Estate.) However, Owners may use the words "Monte Cristo at LaCaille" in printed or promotional matter where such terms are used solely to specify that particular property is located within the Monte Cristo at LaCaille Subdivision and the Association shall be entitled to use the words "Monte Cristo at LaCaille" in its name.

15.7 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, any applicable Supplemental Declaration, the Bylaws, the Design Guidelines, and any promulgated Use Restrictions and Rules. Except as otherwise provided in this Declaration, failure to comply shall be grounds for an action by the Association or, in a proper case, by an aggrieved Lot Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in this Declaration.

15.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations and a Reinvestment Fee, if applicable, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.9 Exhibits. The exhibits referred to herein and attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on the day and year first above written.

Quail Run Development, LLC  
by its manager, CW Management Corporation,  
  
By: Christopher K. McCandless, its President

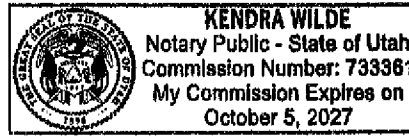
STATE OF UTAH            )  
  )ss.  
COUNTY OF SALT LAKE )

On this 4 day of June, 2024, Christopher K. McCandless, identified to me to be the President of CW Management Corporation, appeared before me and

executed the above instrument on behalf of said corporation in its capacity as Manager of Quail Run Development, LLC, and acknowledged that such corporation executed the same.

Kendra Wilde  
NOTARY PUBLIC

My Commission Expires:



Consent. By its signature below, consistent with the introductory statement above, Holladay 2550, LLC, a Utah limited liability company, hereby affirms its contributions to and participation in the Monte Cristo Subdivision Plat, and consents and agrees without reservation that Quail Run Development, LLC, as Declarant, may make this Declaration and thereby subject the Subdivision Estate, with exceptions, to its provisions.

Holladay 2550, LLC  
by iFreedom Direct Corporation, its Manager

by \_\_\_\_\_, its \_\_\_\_\_  
Date: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, \_\_\_\_\_, identified to me to be the \_\_\_\_\_ of iFreedom Direct Corporation, appeared before me and executed the above consent on behalf of said corporation in its capacity as Manager of Holladay 2550, LLC, and acknowledged that such corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

executed the above instrument on behalf of said corporation in its capacity as Manager of Quail Run Development, LLC, and acknowledged that such corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Consent. By its signature below, consistent with the introductory statement above, Holladay 2550, LLC, a Utah limited liability company, hereby affirms its contributions to and participation in the Monte Cristo Subdivision Plat, and consents and agrees without reservation that Quail Run Development, LLC, as Declarant, may make this Declaration and thereby subject the Subdivision Estate, with exceptions, to its provisions.

Holladay 2550, LLC  
by iFreedom Direct Corporation, its Manager

\_\_\_\_\_  
by Kevin P. Gates, its President  
Date: 6/5/24

On this 5 day of June, 2024, Kevin P. Gates, identified to me to be the President of iFreedom Direct Corporation, appeared before me and executed the above consent on behalf of said corporation in its capacity as Manager of Holladay 2550, LLC, and acknowledged that such corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

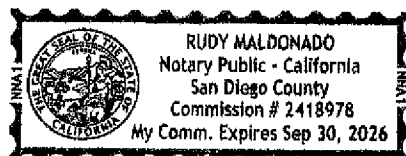


EXHIBIT "A"

Properties in the Subdivision Estate

See Attached Legal Description from the official Plat of the MONTE CRISTO AT LA CAILLE SUBDIVISION on file and of record in the office of the Salt Lake County Recorder,

expressly including Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113 as depicted on and according to the official Plat of the MONTE CRISTO AT LA CAILLE SUBDIVISION on file and of record in the office of the Salt Lake County Recorder.

(The the official Plat of the MONTE CRISTO AT LA CAILLE SUBDIVISION was recorded as Entry #14042899, in Book 2022P at Page 286 in the official records of the Salt Lake County Recorder.)



**PROPERTY DESCRIPTION OF  
MONTE CRISTO AT LA CAILLE SUBDIVISION**

MONTE CRISTO AT LACAILLE PLAT, being more particularly described as follows:

A parcel of land situate in the Northwest quarter of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the Northwest corner of Little Cottonwood East Subdivision, recorded February 13, 1980 as Entry No. 3398713 in Book 80-2 at Page 31 in the office of the Salt Lake County Recorder, said point also being North 00°38'44" West 493.34 feet along the section line and East 1,766.31 feet from the West quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 03°00'57" East 155.00 feet along the Easterly boundary line and its extension of Mountain Valley Subdivision, recorded November 28, 1978 as Entry No. 3203350 in Book 78-11 at Page 319; thence North 02°59'01" East 215.27 feet (North 03°00'00" West record); thence North 86°00'59" West 79.89 feet; thence Westerly 75.56 feet along the arc of a 176.00 foot radius curve to the left (center bears South 03°59'01" West and the chord bears South 81°41'06" West 74.98 feet with a central angle of 24°35'50"); thence South 69°23'11" West 113.87 feet; thence North 20°36'49" West 38.62 feet; thence South 62°57'20" West 51.54 feet; thence North 89°45'02" West 87.71 feet to the Easterly boundary line of Lot 3 of the La Caille Subdivision, recorded January 30, 1995 as Entry No. 6012894 in Book 95-1P at Page 17; thence along said Easterly boundary line the following two (2) courses: (1) North 03°13'01" East 68.36 feet; (2) North 07°35'01" East 200.00 feet to the center line of Little Cottonwood Creek; thence along said center line the following fourteen (14) courses: (1) North 89°59'01" East 14.42 feet; (2) South 15°18'15" West 13.18 feet; (3) South 74°50'45" East 64.41 feet; (4) North 70°05'26" East 114.78 feet; (5) South 84°10'43" East 152.38 feet; (6) South 18°29'57" West 6.19 feet; (7) South 78°04'52" East 8.90 feet; (8) South 68°36'25" East 41.55 feet; (9) South 77°13'11" East 43.44 feet; (10) South 83°11'25" East 38.70 feet; (11) South 73°38'13" East 40.39 feet; (12) South 89°39'03" East 142.38 feet; (13) South 66°52'57" East 136.14 feet; (14) South 68°37'37" East 79.14 feet; thence South 02°59'01" West 263.34 feet; thence North 87°00'59" West 23.14 feet; thence South 02°59'01" West 227.51 feet to the Northerly boundary line of said Little Cottonwood East Subdivision; thence North 87°00'59" West 432.74 feet (North 87°00' West 431.86 feet record) along said Northerly boundary line to the point of beginning.

Tax Id No.: 28-12-177-018 through 28-12-177-027 and 28-12-177-029 through 28-12-177-034

EXHIBIT "B"

Bylaws of the Monte Cristo at LaCaille Homeowners Association, Inc.

See Attached

**BYLAWS  
OF  
MONTE CRISTO AT LACAILLE  
HOMEOWNERS ASSOCIATION, INC.**

**Article I**

**Name, Principal Office, and Definitions**

1.1. Name. The name of the Utah non-profit corporation is MONTE CRISTO AT LACAILLE HOMEOWNERS ASSOCIATION, INC. (the "Association").

1.2. Principal Office. The principal office of the Association shall initially be located at 9071 South 1300 West, Suite 100, West Jordan, Utah 84088. The Association may have such other offices as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Monte Cristo at LaCaille Subdivision filed in the office of the Salt Lake County Recorder as it may be amended from time to time (the "Declaration"), unless the context indicates otherwise.

**Article II**

**Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area. The Association shall be the primary entity responsible for enforcement of the Declaration and such reasonable rules regulating use of the properties within the Subdivision Estate as the Board or the membership administering and enforcing the standards, restrictions, guidelines, procedures, etc., set forth in the Declaration, and in the Design Guidelines if any are adopted. The Association shall perform its functions in accordance with the Declaration, the Bylaws, the Articles and the laws of the State of Utah.

2.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership as one Member applicable to that Lot subject to reasonable Board regulation and the restrictions on voting set forth in the Declaration and in these Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, manager, member, trustee, partner, or other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

2.3. Classes of Membership; Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A": Class "A" Members shall be all Members except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership according to the Declaration; provided, there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under the Declaration. In any situation where there is more than one Owner of a Lot, the Member vote for such Lot shall be exercised as the co-Owners determine among themselves, and of which the co-Owners may advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, a Member vote shall be accepted if the person voting is one of the co-Owners, or an agent of fiduciary of such Owner, and the person appears to be acting on behalf of all co-Owners. That failing, or if more than one of the co-Owners seeks to exercise the vote, the Lot's vote shall be suspended until notice is received of the co-Owners' determination concerning authority to vote.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The Class "B" Control Period is also called the Administrative Control Period, as defined in the Declaration. It commenced with recordation of the Declaration and shall terminate as provided in Section 4.4(b) of the Declaration. The rights of the Class "B" Member, including but not limited to the right to approve, or withhold approval of, actions proposed under the Declaration, the Bylaws and the Articles, are specified in the relevant sections of the Declaration, the Bylaws and the Articles. The Class "B" Member may appoint all of the members of the Board of Directors during the Administrative Control Period as described in Section 4.4 of the Declaration. Furthermore, in a meeting of the Members of the Association, the Class "B" Member shall be entitled to three (3) votes for each Lot in which such Class "B" Member holds an ownership interest, whether or not such Lot is exempt from assessment. During the two years which immediately follow any termination of the Administrative Control Period, the Class "B" Member shall be notified in writing of and have a right to disapprove actions of the Board and committees, expressly including those of the Design Review Committee. The Class "B" Membership shall terminate two years after expiration of the Administrative Control Period, as established in and governed by the Declaration and/or these Bylaws, unless the Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records. After termination of the Class "B" Membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot in which the Declarant has an ownership interest.

2.4. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place in Salt Lake County, which is convenient to the Members, as may be designated by the Board.

2.5. Annual Meetings. The annual meetings of the Association shall be held in the month of January of each year on a date and at a time set by the Board.

2.6. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the total Class "A": votes in the Association.

2.7. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice, and no business shall be transacted at such meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered on the third day after it is deposited in the United States mail addressed to the Member at such Member's address as it appears on the records of the Association, with postage prepaid. Notwithstanding the foregoing, a Member may elect or consent in writing to receive notices of meetings of the Association by electronic means. In that event, such Owner -- or all co-Owners, as applicable -- constituting the Member shall deliver a written, signed and dated statement to that effect (a "Consent") to the officers of the Association, in which the Owner or co-Owners shall specify the acceptable manner of electronic delivery, including the desired address or number to which it must be sent, and shall expressly state that any notice, if sent in that manner, will be deemed to have been delivered and received by the Member on the next day after the date it was sent for all purposes under this Bylaw. The Consent may state an expiration date, or may be revoked at any time. Unless it expires sooner by its own terms or is revoked, the Consent shall automatically terminate upon the earliest to occur of the following: conveyance of any Lot for which it was given; receipt of notice by any Association officer of the death or judicially declared incompetence of the Person to whom the notices are delivered; or twenty-four months from the date of the Consent. The Consent shall be retained in the official records of the Association, and the Association may (but shall have no duty to) give notice to that Member in that manner.

2.8. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.9. Adjournment of Meetings.

- (a) Postpone for Lack of Quorum: If any meeting of the Association cannot be conducted because a quorum of Members or their proxies is not present, the Board may postpone the meeting to a time not less than ten (10) nor more than (30) days from the time the original meeting was called, and shall give notice of the new

meeting date according to 2.7, above, not less than five (5) days prior to the new meeting date. Provided that a quorum is present and the meeting is duly convened at the day and time to which it was postponed, any business may be transacted which might have been transacted at the meeting originally called.

- (b) To Continue a Meeting: At any time during any meeting which has been duly called to order, the Members or their proxies holding a majority of the votes represented may adjourn that meeting to, and reconvene such meeting on, a date which is announced at the meeting before adjournment and is no more than thirty days from the time of the original meeting. Any business may be transacted at such reconvened meeting which might have been transacted at the meeting originally called to order. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting, then notice shall be given to members in the manner prescribed for regular meetings.
- (c) The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment.

2.10. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, trustee, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Utah law. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. In the event that there is more than one co-Owner, a proxy may be rejected if it appears in good faith that the person who signed it is not acting on behalf of all of the co-Owners. The corporation may reject any proxy (and proxy vote) if the secretary or any other officer or agent, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or the signatory's authority to sign for the Member. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable. A proxy shall automatically cease upon conveyance of any Lot for which it was given; or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person; or upon written revocation; or upon the expiration of 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. During the Class "B" Control Period, the presence of an authorized representative of the Class "B" Member shall constitute a quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of Members representing more than 51% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association. If any meeting of the Owners cannot be called to order and conduct business due to lack of a quorum, and is adjourned as provided in 2.9, the presence, in person or by proxy, of Members representing more than 40% of the total Class "A" votes in the Association shall constitute a quorum at such adjourned meeting.

2.12. Conduct of Meetings. As reasonably determined and permitted by the Board, and of which notice is given in advance, any meeting of the Association may be conducted by means of electronic communication which allows all Owners participating in such meeting to be able to hear each other in the proceedings in real time, and provides a reasonable method for conducting voting. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. In each case in which the purpose or purposes for which the meeting is required to be stated in the notice, such as a special meeting or when otherwise required by statute or these Bylaws, no business shall be transacted at such meeting except as stated in the notice.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### Article III

#### **Board of Directors: Number, Powers, Meetings**

##### A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to Directors who are either appointed by the Class "B" Member or were first appointed by the Class "B" Member and then retained at an election of the Class "A" Members, the Directors shall be Members or Residents; provided, no Owner or Resident representing the same Lot may serve on the Board at the same time as another representing the same Lot. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Lot within the Subdivision Estate. In the case of a Member which is not a natural person, any officer, trustee, partner, manager, member, employee or trust officer of such Member shall be eligible to serve as a trustee, unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of Directors appointed by the Class "B" Member.

3.2. Number of Directors. The Board shall consist of three (3) Directors. The initial Board shall consist of the three Directors as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5. below, all of the Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the expiration of the Class "B" Control Period, which shall be upon first to occur of the following:

(a) ninety (90) days after 100% of the Lots have been conveyed to Owners other than a Declarant or H2550 and have been issued building permits for construction of residential structures approved by the Declarant, Board of Directors or Design Review Committee;

(b) ten (10) years after the Declarant and H2550 have both ceased to offer Lots for sale in the ordinary course of business; or

(c) the day the Declarant – with the written consent of H2550 if it has not conveyed its Lot(s) to Owner(s) other than Declarant – records an instrument voluntarily surrendering all of its rights as a declarant under the Administrative Control Period and notifies the Owners thereof.

3.4. Nomination and Election Procedures. After the Class “B” Control Period, elections shall proceed as follows:

(a) Nominations and Declaration of Candidacy. Prior to each election of Directors the Board shall establish such rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Nominations for election to the Board may be made by any Member entitled to vote at such election, or by a Nominating Committee.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Transition of Board of Directors from Class “B” Control Period.

(a) Within 90 days after the termination of the Class “B” Control Period, the President shall call for an election by which the Class “A” Members shall be entitled to elect the members of the Board of Directors. In their discretion, the Class “A” Members may elect to retain one or more of the Directors previously appointed by the Class “B” Member and may continue to reelect such Director(s) for so long as they desire. The Directors elected by the Class “A” Members shall not be subject to removal by the Class “B” Member and shall serve until the first annual meeting following the termination of the Class “B” Control Period.

(b) Not later than the first annual meeting after the termination of the Class “B” Control Period, an election shall be held. All Directors shall be elected by the Class “A” Members, with two Directors receiving the largest number of votes being elected for the term of two years and the remaining director being elected for a term of one year. Upon the expiration of the term of office of each director elected by the Class “A” Members, a successor shall be elected to serve a term of two years. The Directors elected



by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director. Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, and remains delinquent after notice and a ten (10) days opportunity to cure, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to Directors appointed by the Class "B" Member. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Annual Meetings. The Board shall hold an annual meeting within thirty (30) days of the annual meeting of the membership. The annual meeting shall be held at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice at the direction of the President or any two Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. No business shall be transacted at such meeting except as stated in the notice.

3.10 Notice; Waiver of Notice.

(a) Written notice of the time and place of a regular meeting shall be provided to each of the Directors not less than seven calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to Directors not less than three business days prior to the meeting. Notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid to the mailing address of such

director; or (iii) by electronic mail to the preferred e-mail address of such director. A director may notify the Board in writing if they decline to receive notices of meetings of the Board by electronic mail. The Board shall retain a copy of the declination notice in the official records of the Association. Notices sent by first class mail shall be deemed communicated two business days after being deposited into the United States mail. Notices given by personal delivery or electronic delivery shall be deemed communicated when delivered or sent.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, a consent to the action taken, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting, before or at its commencement, about the lack of adequate notice.

3.11. Electronic Participation in Meetings. As reasonably determined and permitted by the Board, and of which notice is given in advance, any meeting of the Board may be conducted by means of electronic communication which allows all directors participating in such meeting to be able to hear (and see, if applicable) one another during the proceedings in real time, and provides a reasonable method for conducting voting. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration or applicable law. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting and notify all directors thereof. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors at a meeting of the Board. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to the contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Notice to Owners; Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. The Board shall make a good faith effort to provide notice of the meeting to the Owners, and may do so in the same manner as notice may be provided to directors (including e-mail, whether or not the Owner has given Consent to such notice for meetings of the Members, as provided in Section 2.7, above). In the discretion of the Board, by majority vote, or the reasonable discretion of the director who is chairing such meeting, the chairperson may adjourn any meeting of the Board and reconvene such meeting in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, matters concerning a Member of the Association, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things that are not directed by the Declaration, Articles, these Bylaws, or Utah law to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Lot's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Area;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) opening of bank accounts on behalf of the Association and designating the signatories required;

(g) making or contracting for the maintenance of and/or making of repairs, additions, and improvements to or alterations of the Common Area as may become necessary or appropriate in accordance with the Declaration and these Bylaws;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(i) obtaining and carrying appropriate property and liability insurance, together with other insurance and/or fidelity bonds, as it deems appropriate and as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Association;

(k) keeping books with detailed accounts of the receipts and expenditures of the Association;

(l) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4; and

(m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Subdivision Estate.

3.19. Right of Class "B" Member to Disapprove Actions. Until the end of two years after expiration of the Administrative Control Period, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant under the Declaration or these Bylaws, or interfere with development of or construction on any Lot within the Subdivision Estate, or diminish the level of services being provided by the Association. Until that time:

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, by personal delivery at the address it has registered with the Secretary of the Association, or, if it has agreed to accept electronic notice, by email to the address it has provided to the Secretary of the Association for that purpose. Each such notice shall comply with the provisions as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents shall have the opportunity and right to make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or agent or authorized representative, may exercise its right to disapprove at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accounting and controls should conform to generally accepted accounting principles;

(b) cash accounts of the Association shall not be commingled with any other accounts;

(c) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing good or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association; and

(d) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in Section 8.5. of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhoods and other owners or residents associations, within and outside the Subdivision Estate; provided, any common management agreement shall require the consent of a majority of the total number of Directors of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Lot of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these Bylaws, or any Association rules. In addition, the Board may, but shall have no duty to, suspend any services provided by the Association to an Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Lot violates the Declaration, Bylaws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Lot and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction

shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, trustee, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. There shall be no appeal from a decision of the Board of Directors.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with any dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

#### **Article IV** **Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable; such officers shall have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.13.

## **Article V**

### **Liability, Indemnification of Directors, Committee Members and Officers**

Each member of the Board of Directors, each member of a committee of the Association (such as, but not limited to the Design Review Committee), and officer of the Association, in consideration of his or her services, shall be forever exempt from any and all liability or debt incurred or to be incurred by this corporation. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligence or otherwise in the course of their service, except for their own individual gross negligence or willful misfeasance, misconduct, or bad faith. To the extent permitted by the Utah Revised Nonprofit Corporation Act, the Association shall indemnify and forever hold each of its officers, directors and committee members harmless from any and all liability or debt reasonably incurred or to be incurred by this corporation (except to the extent that such persons are Members of the Association and accordingly share therein) and against all damages and expenses, including legal fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Article, the Articles of Incorporation, and/or Utah law. The foregoing right to indemnification shall not be exclusive of any other rights to which the director or officer or person may be entitled by law or agreement or vote of the members or otherwise. By ways of example, and without limitation



intended: No director or member of any committee of the Association, and no officer of the Association shall be personally liable to the Association or its Members or to any Owner for damages for breach of fiduciary duty, mistake of judgment, negligence, tortious acts or other conduct, but this Article shall not eliminate or limit the liability of such for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law. No director or member of any committee of the Association, and no officer of the Association shall be personally liable in contract under any agreement, instrument or transaction entered into by them on behalf of the Association. Further, no director, member of any committee of the Association and no officer of the Association shall have any personal liability arising out of use, misuse or condition of any part of the Subdivision property that might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as Directors, officers or committee members. Members of the Board of Directors or officers shall not be personally liable to the victims of crimes occurring at the Subdivision by virtue of their capacity as Directors or officers.

## **Article VI** **Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law, the Articles of Incorporation, the Declaration, or these Bylaws.

6.3. Conflicts. If there are conflicts between the provisions of Utah Law, the Articles of Incorporation, the Declaration, or these Bylaws, the conflict shall be resolved by reference to the prior listed authority, as set forth in this sentence.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage of a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for the purpose reasonably related to his or her interest in a Lot: the Declaration, Bylaws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. Unless otherwise agreed, the Board shall provide for such inspection to take place at the office of the Association or at such other place within the Subdivision Estate as the Board shall designate.

(b) Rules for Inspection. The Board may establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, and other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. Until the expiration of the Administrative Control Period, the Class "B" Member may amend these Bylaws, subject to the requirements of the Declaration, if applicable. Thereafter, the Class "B" Member may amend these Bylaws if such amendment is specifically required to enable the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to make, purchase, insure or guarantee mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided in (a), above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least two-thirds (2/3) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the requirements of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause.

- (d) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege. If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

## **Article VII**

### **Compliance with Corporate Transparency Act**

7.1 Comply. The Association shall comply with its obligations under the Corporate Transparency Act of 2020 (as amended, the "CTA") and with the regulations (the "CTA Regulations") promulgated by the Financial Crimes Enforcement Network ("FinCEN") thereunder.

7.2 Compliance Officer. The Board of Directors shall appoint a Compliance Officer who shall gather and safeguard CTA Data (defined below) and cause the Association to comply with its duties under the CTA, such as, but not limited to, the reporting obligations thereunder. If for any reason, at any time, the office of Compliance Officer is vacant, the President of the Association shall serve as the Compliance Officer, until a Compliance Officer is appointed. The Compliance Officer shall have authority to take any steps reasonably necessary or convenient to cause the Association to perform its obligations under the CTA and the CTA Regulations, including, without limitation, by causing the Association to file any beneficial ownership report that may be required thereunder.

7.3 Reports to Board of Directors. The Compliance Officer shall provide written reports, from time to time, to the Board of Directors regarding the status of the Association's compliance with the CTA. Such reports shall be made no less frequently than annually.

7.4 Duty to Provide CTA Data. Each person who qualifies as a "Beneficial Owner", and exercises "Substantial Control" (which terms shall have the meanings assigned to them in the CTA Regulations), and/or each Member who (i) owns, directly or indirectly, twenty-four percent (24%) or more of the Lots in the Subdivision or (ii) controls twenty-four percent (24%) or more of the Class A Member votes, shall have a duty to provide to the Compliance Officer such person's:

- (a) full legal name,
- (b) date of birth,
- (c) residential street address,
- (d) business street address,

- (e) a unique identifying number from one of the following documents: (1) a non-expired passport issued by the United States Government, (2) a non-expired identification document issued to the individual by a state, local government, or Indian tribe for the purpose of identifying the individual, (3) a non-expired driver's license issued to the individual by a state, or, if the individual does not possess any of the documents described in (e) (1), (2) or (3), of this subsection (4) a non-expired passport issued by a foreign government to the individual, and
- (f) an image of the document from which the unique identifying number in (e) above, was obtained which includes both the unique identifying number and photograph of the individual in sufficient quality to be legible or recognizable.

The information described in this subsection is hereinafter referred to as a Member's or an individual's "CTA Data".

7.5 Indirect Ownership of Member Interest. With respect to any Member that is not a natural person, such Member shall provide CTA Data to the Compliance Officer for each natural person Beneficial Owner (as applicable, an "Indirect Owner") of such Member, if the Member has a duty to provide CTA Data to the Association.

7.6 Substantial Control Data. Each Member shall also provide to the Compliance Officer any information or documents that may be required to determine whether such Member or any Indirect Owner has "Substantial Control" (as that term is defined in the CTA Regulations) over the Association, including, without limitation, by:

- (a) serving as a "Senior Officer" (as that term is defined in the CTA Regulations) of the reporting company,
- (b) having authority over the appointment or removal of any Senior Officer or a majority of the Board of Directors of the Association,
- (c) having any direction, determination, or decision power over, or substantial influence over important matters affecting the Association, including but not limited to: (1) the nature, scope and attributes of the Association; (2) the organization, dissolution or merger of the Association; (3) major expenditures or investments, incurrence of any significant debt, or approval of the operating budget of the Association; (4) the entry into or termination, or the fulfillment or nonfulfillment of significant contracts of the Association; (5) amendments of any substantial governing documents of the Association, including the Declaration, Articles of Incorporation, Bylaws, and significant policies or procedures of the Company; or
- (d) any other form of Substantial Control over the Association.

Information and documents provided by any Member for purposes of this subsection is hereinafter referred to as a "Substantial Control Data".

7.7 Company Applicant. The Compliance Officer shall have a duty to collect CTA Data and Substantial Control Data from each individual who is a "Company Applicant" (as such term is defined in the CTA Regulations) with respect to the Association.

7.8 Safeguarding CTA Data. The Compliance Officer shall have a duty to safeguard the CTA Data and Substantial Control Data collected from Members and any other persons in accordance with this section through such methods and systems as the Compliance Officer and the Board of Directors may reasonably determine. CTA Data and Substantial Control Data shall not be recorded in minute records or other published or publicly available documents or instruments.

7.9 Duty to Promptly Report. Each Member shall have a duty to notify the Compliance Officer in writing of any change in CTA Data or Substantial Control Data previously provided by such Member to the Compliance Officer promptly after such change occurs (but in any event no more than ten (10) calendar days after such change occurs).

7.10 Indemnification. Each Member shall indemnify and defend the Association against any third party claim, loss or expense incurred by the Association as a result of (1) any inaccuracy in any CTA Data or Substantial Control Data provided by such Member, or (2) any failure of such Member to provide amended CTA Data or Substantial Control Data to the Compliance Officer within the time period required by subsection 7.9 above.

### CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Monte Cristo at LaCaille Homeowners Association, Inc., an Utah corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Secretary

EXHIBIT "C"  
Legal Descriptions of the Properties in the La Caille™ Estate

PARCEL 1: TIN 28-12-177-014

BEGINNING AT A POINT BEING NORTH 89°52'27" EAST 1734.05 FEET ALONG THE SECTION LINE AND NORTH 3°00'00" EAST 863.85 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING; THENCE NORTH 86°00'00" WEST 208.88 FEET; THENCE NORTH 3°00'00" EAST 225.78 FEET TO THE CENTERLINE OF LITTLE COTTONWOOD CREEK; THENCE SOUTH 84°09'44" EAST 68.68 FEET ALONG THE CENTERLINE OF SAID LITTLE COTTONWOOD CREEK; THENCE SOUTH 3°00'00" WEST 179.82 FEET; THENCE SOUTH 86°00'00" EAST 140.27 FEET; THENCE SOUTH 3°00'00" WEST 43.75 FEET TO THE POINT OF BEGINNING.

PARCEL 2: TIN 28-12-179-002

BEGINNING AT A POINT 105.1 RODS EAST AND NORTH 3° EAST 645.05 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 87° EAST 432.8 FEET; THENCE NORTH 3° EAST 75 FEET; THENCE NORTH 87° WEST 90 FEET; THENCE NORTH 43°35' WEST 145.5 FEET; THENCE NORTH 87° WEST 237.1 FEET; THENCE SOUTH 3° WEST 175 FEET TO THE POINT OF BEGINNING.

PARCEL 3: TIN 28-12-179-004

BEGINNING AT A POINT 105.1 RODS EAST AND NORTH 3° EAST 720.05 FEET AND SOUTH 87° EAST 342.8 FEET AND NORTH 43°35' WEST 52.5 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 43°35' WEST 48 FEET; THENCE NORTH 21°26' EAST 253 FEET, MORE OR LESS, TO THE CENTER OF SAID CREEK SOUTHEASTERLY 13.3 FEET, MORE OR LESS, TO A POINT NORTH 13°10' EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 13°10' WEST 266.2 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 4: TIN 28-12-179-001

Beginning at a point North 89°52'27" East 1734.05 feet along the Section line and North 03°00'00" East 907.60 feet from the West quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 86°00'00" West 140.27 feet; thence North 03°00'00" East 179.82 feet to the centerline of said Little Cottonwood Creek; thence South 84°09'44" East 85.01 feet along the centerline of said Little Cottonwood Creek to the Southwest corner of Rola Acres Phase 1; thence South 73°37'14" East 171.95 feet along the South line of said Rola Acres Phase 1 and being the centerline of said Little Cottonwood Creek; thence South 89°38'04" East 22.09 feet along the South line of said Rola Acres Phase 1 and being the centerline of said Little Cottonwood Creek; thence South 03°00'00" West 106.82 feet;

thence South 67°08'00" West 77.00 feet; thence North 86°00'00" West 64.73 feet to the point of beginning.

PARCEL 5: TIN 28-12-179-005

Commencing at a point 105.1 rods East and North 03°00'00" East 820.05 feet from the West quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 87°00'00" East 237.1 feet; thence South 43°35'00" East 45.0 feet; thence North 21°26'00" East 253 feet more or less to the center line of Little Cottonwood Creek; thence Northwesterly along the center line of said creek 220 feet more or less to the Northeast corner of Clarence L. and Laura S. Giles property; thence South 03°00'00" West 131.14 feet; thence South 67°08'00" West 77 feet; thence North 86°00'00" West 64.73 feet; thence South 03°00'00" West 86.51 feet to the place of beginning.

PARCEL 6: TIN 28-12-177-015

Commencing 105.1 rods East and North 03°00'00" East 490.05 feet and South 87°00'00" East 455.8 feet and North 03°00'00" East 230 feet from the West quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Meridian, and running thence North 87°00'00" West 113 feet; thence North 43°35'00" West 52.5 feet; thence North 13°10'00" East 266.2 feet, more or less, to the center of Little Cottonwood Creek; thence Southeasterly along said creek 106.7 feet, more or less to a point which is North 03°00'00" East from the point of beginning; thence South 03°00'00" West 258 feet, more or less to the point of beginning.

LESS AND EXCEPTING THEREFROM the above described right of way any portion lying within Lots 1, 2, 3 and 4, Little Cottonwood East Subdivision, according to the official plat thereof on file and of record in the Salt Lake County Recorder's Office.

PARCEL 7: TIN 28-12-151-037

Lot 1, THE LA CAILLE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County recorder.

PARCEL 8: TIN 28-12-151-038

Lot 2, THE LA CAILLE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County recorder.

PARCEL 9: TIN 28-12-151-039

Lot 3, THE LA CAILLE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County recorder.

PARCEL 10: TIN 28-12-151-040

BEG N 0°37'45" W 853.335 FT FR W 1/4 COR SEC 12, T 3S, R 1E, SLM; E 183 FT; N 11° E 107.624 FT; S 83° E 26.113 FT; N 0° 18' E 288.56 FT; N 230 FT; W 18.52 FT M OR L; S 24

FT; E 18.52 FT M OR L; S 206 FT M OR L; S 0°18' W 268.56 FT; W 230.96 FT M OR L; S 0°37'45" E 127.55 FT M OR L TO BEG.

PARCEL 11 TIN 28-12-151-041

BEG S 0°37'45" E 1204.50 FT FR NW COR SEC 12, T 3S, R 1E, SLM; E 121.76 FT; S 43 FT; W 121.29 FT; N 0°37'45" W 43.00 FT TO BEG.

PARCEL 12 TIN 28-12-151-002

BEG 1228 FT S & 225 FT E FR NW COR SEC 12, T 3S, R 1E, SL MER, E 18.26 FT; S 206.5 FT; S 0°18' W 268.56 FT; W 16.61 FT; N 475 FT M OR L TO BEG.

PARCEL 13 TIN 28-12-177-013

BEG E 1410.18 FT & S 1997.08 FT FR NW COR SEC 12, T 3S, R 1E, SLM; S 3°14' W 90.18 FT M OR L; N 59°44'04" W 18.37 FT; N 3°14' E 82.05 FT M OR L; S 86° E 16.17 FT TO BEG.

PARCEL 14 TIN 28-12-177-018

LOT 101, MONTE CRISTO AT LACAILLE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

PARCEL 15 TIN 28-12-177-029

BEG N 00°38'44" W 493.34 FT & E 1766.31 FT FR W 1/4 SEC 12, T3S, R1E SLM; N 3°00'57" E 155 FT; N 2°59'01" E 215.27 FT; N 86°00'59" W 79.89 FT; SW'LY ALG 176 FT RADIUS CURVE TO L, 75.56 FT (CHD S 81°41'06" W); S 69°23'11" W 113.87 FT; N 20°36'49" W 38.62 FT; S 62°57'20" W 51.54 FT; N 89°45'02" W 87.71 FT; N 3°13'01" E 68.36 FT; N 7°35'01" E 200 FT; N 89°59'01" E 14.42 FT; S 15°18'15" W 13.18 FT; S 74°50'45" E 64.41 FT; N 70°05'26" E 114.78 FT; S 84°10'43" E 152.38 FT; S 18°29'57" W 6.19 FT; S 78°04'52" E 8.90 FT; S 68°36'25" E 41.55 FT; S 77°13'11" E 43.44 FT; S 83°11'25" E 38.70 FT; S 73°38'13" E 40.39 FT; S 89°39'03" E 142.38 FT; S 66°52'57" E 136.14 FT; S 68°37'37" E 79.14 FT; S 2°59'01" W 263.34 FT; N 87°00'59" W 23.14 FT; S 2°59'01" W 227.51 FT; N 87°00'59" W 432.74 FT TO BEG. LESS & EXCEPT BEG N 86°00'59" W 79.89 FT M OR L & SW'LY ALG 176 FT RADIUS CURVE TO L, 29.79 FT (CHD S 89°16'38" W) M OR L FR NW COR LOT 113 MONTE CRISTO AT LACAILLE: N 86°00'59" W 58.29 FT M OR L; SW'LY ALG 36 FT RADIUS CURVE TO L, 34 FT (CHD S 66°55'30" W); SW'LY ALG 150 FT RADIUS CURVE TO R, 50.11 FT (CHD S 49°34'13" W); N 69°31'51" E 87.30 FT; NE'LY ALG 176 FT RADIUS CURVE TO R 45.77 FT (CHD N 76°58'35" E) M OR L TO BEG. ALSO LESS LOTS & PUBLIC STREET QUAIL VIEW COVE & 3775 E. (BEING PT PRIVATE STREET IN MONTE CRISTO AT LACAILLE SUB).

PARCEL 16 TIN 28-12-177-027



BEG N 86°00'59" W 79.89 FT M OR L & SW'LY ALG 176 FT RADIUS CURVE TO L, 29.79 FT (CHD S 89°16'38" W) M OR L FR NW COR LOT 113 MONTE CRISTO AT LACAILLE: N 86°00'59" W 58.29 FT M OR L; SW'LY ALG 36 FT RADIUS CURVE TO L, 34 FT (CHD S 66°55'30" W); SW'LY ALG 150 FT RADIUS CURVE TO R, 50.11 FT (CHD S 49°34'13" W); N 69°31'51" E 87.30 FT; NE'LY ALG 176 FT RADIUS CURVE TO R 45.77 FT (CHD N 76°58'35" E) M OR L TO BEG.

PARCEL 17 TIN 28-12-177-028

BEG N 89°51'28" E 1372.44 FT & N 827.38 FT FR W 1/4 SEC 12, T3S, R1E, SLM; S 89°45'02" E 87.71 FT; N 62°57'20" E 51.54 FT; S 20°36'49" E 38.62 FT; NE'LY ALG 150 FT RADIUS CURVE TO L, 77.28 FT (CHD N 54°37'35" E); NE'LY ALG 36 FT RADIUS CURVE TO R, 34 FT (CHD N 66°55'30" E); S 86°00'59" E 168.42 FT; S 2°59'01" W 222.38 FT; N 85°44'23" W 225.41 FT; N 3°00'57" E 16.50 FT; N 85°59'03" W 180.71 FT; N 3°13'01" E 144.14 FT TO BEG. LESS ANY PORTION LYING IN MONTE CRISTO AT LACAILLE.

PARCEL 18 TIN 28-12-177-029

BEG N 00°38'44" W 493.34 FT & E 1766.31 FT FR W 1/4 SEC 12, T3S, R1E SLM; N 3°00'57" E 155 FT; N 2°59'01" E 215.27 FT; N 86°00'59" W 79.89 FT; SW'LY ALG 176 FT RADIUS CURVE TO L, 75.56 FT (CHD S 81°41'06" W); S 69°23'11" W 113.87 FT; N 20°36'49" W 38.62 FT; S 62°57'20" W 51.54 FT; N 89°45'02" W 87.71 FT; N 3°13'01" E 68.36 FT; N 7°35'01" E 200 FT; N 89°59'01" E 14.42 FT; S 15°18'15" W 13.18 FT; S 74°50'45" E 64.41 FT; N 70°05'26" E 114.78 FT; S 84°10'43" E 152.38 FT; S 18°29'57" W 6.19 FT; S 78°04'52" E 8.90 FT; S 68°36'25" E 41.55 FT; S 77°13'11" E 43.44 FT; S 83°11'25" E 38.70 FT; S 73°38'13" E 40.39 FT; S 89°39'03" E 142.38 FT; S 66°52'57" E 136.14 FT; S 68°37'37" E 79.14 FT; S 2°59'01" W 263.34 FT; N 87°00'59" W 23.14 FT; S 2°59'01" W 227.51 FT; N 87°00'59" W 432.74 FT TO BEG. LESS & EXCEPT BEG N 86°00'59" W 79.89 FT M OR L & SW'LY ALG 176 FT RADIUS CURVE TO L, 29.79 FT (CHD S 89°16'38" W) M OR L FR NW COR LOT 113 MONTE CRISTO AT LACAILLE: N 86°00'59" W 58.29 FT M OR L; SW'LY ALG 36 FT RADIUS CURVE TO L, 34 FT (CHD S 66°55'30" W); SW'LY ALG 150 FT RADIUS CURVE TO R, 50.11 FT (CHD S 49°34'13" W); N 69°31'51" E 87.30 FT; NE'LY ALG 176 FT RADIUS CURVE TO R 45.77 FT (CHD N 76°58'35" E) M OR L TO BEG. ALSO LESS LOTS & PUBLIC STREET QUAIL VIEW COVE & 3775 E. (BEING PT PRIVATE STREET IN MONTE CRISTO AT LACAILLE SUB).

PARCEL 19 TIN 28-12-177-026

PARCEL B, MONTE CRISTO AT LACAILLE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

PARCEL 20 TIN 28-12-179-026

PARCEL A, MONTE CRISTO AT LACAILLE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

EXHIBIT "D"  
Post-Construction Storm Water Maintenance Agreement  
and  
Long-Term Stormwater Maintenance Plan

See Attached

31  
MF

When recorded, mail to:  
Sandy City Recorder's Office  
10000 Centennial Pkwy  
Sandy, UT 84070

13986383 B: 11357 P: 2134 Total Pages: 31  
07/18/2022 12:20 PM By: [unclear] Fees: \$0.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: SANDY CITY RECORDER  
10000 CENTENNIAL PARKWAY SANDY, UT 84070



Project Name: Monte Cristo at La Caille Property

Address: 3775 E Little Cottonwood Lane, Sandy, Utah

Parcel ID# 28121790020000

**Post-Construction Storm Water Maintenance Agreement**

**WHEREAS**, the Property Owner Chris McCandless, QRD LLC, recognizes that the Storm Water Facilities (hereinafter referred to as "Facilities") must be maintained for the development called Monte Cristo at La Caille Property, located at 3775 E Little Cottonwood Lane, in the City of Sandy, Salt Lake County, State of Utah; and, **WHEREAS**, the Property Owner is the Owner of the real property more particularly described on the Attached Exhibit A as recorded by deed in the records of the Clerk of the Salt Lake County Recorder's Office (hereinafter referred to as "The Property"), and,

**WHEREAS**, The City of Sandy (hereinafter referred to as "The City") and the Property Owner, or its administrator, executors, successors, heirs, or assigns, agree that the health, safety, welfare and well being of the citizens of the City require that the facilities be constructed and maintained on the property, and,

**WHEREAS**, the Sandy City Ordinances and Code require that the Facilities as shown on the approved development plans and specifications be constructed and maintained by the Property Owner, its administrator, executors, successors, heirs, or assigns.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

**Section 1**

The Facility or Facilities shall be constructed by the Property Owner in accordance with the plans and specifications approved by The City for the development.

**Section 2**

The Property Owner, its administrators, executors, successors, heirs or assigns shall maintain the Facilities in good working conditions acceptable to the City and in accordance with the schedule of Post-Construction and Long Term Maintenance activities hereto and attached as Exhibit B.

**Section 3**

The Property Owner, its administrators, executors, successors, heirs or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. Whenever possible, the City shall provide notice prior to entry.

**Section 4**

In the event the Property Owner, its administrator, executors, successors, heirs or assigns fails to maintain the Facilities as shown on the approved plans and specifications, in accordance with the Maintenance Schedule incorporated in this Maintenance Agreement, the City, with due notice, may enter the property and take whatever steps it deems necessary to return the Facilities to a good working condition. This provision shall not be construed to

allow the City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Facilities and in no event shall this Maintenance Agreement be construed to impose any such obligation on the City.

#### Section 5

In the event the City, pursuant to the Maintenance Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the City within thirty (30) days of receipt thereof for all the costs incurred by the City hereunder. If not paid within the prescribed time period, the City shall secure a lien against the real property in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Property Owner's failure to maintain the Facilities.

#### Section 6

The Property Owner will make accommodation for the removal and disposal of all the accumulated sediments. Temporary storage will be provided onsite in a reserved area(s). The sediment will need to be disposed within two weeks after being removed from the storm drain system.

#### Section 7

The Property Owner shall use the Standard Operation and Maintenance Inspection Report attached to this Maintenance Agreement as Exhibit B and by this reference made a part hereof for the purpose of a minimal annual inspection of the Facilities.

#### Section 8

The Property Owner, its administrator, executors, successors, heirs and assigns hereby indemnifies and hold harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the Facilities by the Property Owner or the existence or maintenance of the Facilities by the Property Owner or the City. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against The City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith.

#### Section 9

This Maintenance Agreement shall be recorded among the deed records of the Clerk of the Salt Lake County Recorder's Office and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrator, executors, heirs, assigns and any other successors in interest.

#### Section 10

This Maintenance Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.

#### Section 11

Invalidation of any one of the provisions of this Maintenance Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

So AGREED this 3rd day of June, 2022

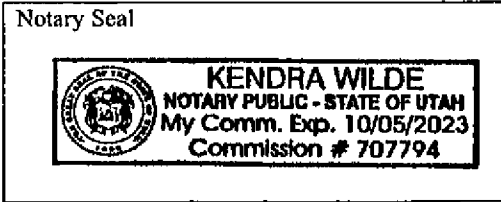
PROPERTY OWNER

BY: OPD CC Projects member Christy Cavallaro  
Title: member

STATE OF Utah )  
COUNTY OF Salt Lake )ss

On this 3rd day of June 2022, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Chris McCandless, the member of Quail Run Development, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/she is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same as his/her voluntary act and deed on behalf of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.



Kendra Wilde  
(Signature of Notary)

My Commission Expires: October 5, 2023

Approved as to form:  
BY: Dawn Barber  
Public Utilities

Date: 6/23/22

- Attachments: Exhibit A (Parcel/ Plat and Legal Description)  
Exhibit B (Standard Operation and Maintenance Inspection Report)  
Exhibit C (Post-Construction Storm Water Maintenance Plan and Inspection Schedule)

EXHIBIT A – Parcel/ Plat and Legal Description

**Monte Cristo at LaCaille Subdivision**

A parcel of land situate in the Northwest Quarter of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the Northwest Corner of Little Cottonwood East Subdivision, recorded February 13, 1980 as Entry No. 3398713 in Book 80-2 at Page 31 in the Office of the Salt Lake County Recorder, said point also being North 00°38'44" West 493.34 feet along the section line and East 1,766.31 feet from the West Quarter Corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running

thence North 03°00'57" East 155.00 feet along the Easterly Boundary Line and its extension of Mountain Valley Subdivision, recorded November 28, 1978 as Entry No. 3203350 in Book 78-11 at Page 319;

thence North 02°59'01" East 215.27 feet (North 3°00'00" West record);

thence North 86°00'59" West 79.89 feet;

thence Westerly 75.56 feet along the arc of a 176.00 foot radius curve to the left (center bears South 03°59'01" West and the chord bears South 81°41'06" West 74.98 feet with a central angle of 24°35'50");

thence South 69°23'11" West 113.87 feet;

thence North 20°36'49" West 38.62 feet;

thence South 62°57'20" West 51.54 feet;

thence North 89°45'02" West 87.71 feet to the Easterly Boundary Line of Lot 3 of the La Caille Subdivision, recorded January 30, 1995 as Entry No. 6012894 in Book 95-1P at Page 17;

thence along said Easterly Boundary Line the following two (2) courses:

(1) North 03°13'01" East 68.36 feet;

(2) North 07°35'01" East 200.00 feet to the center line of Little Cottonwood Creek;

thence along said center line the following fourteen (14) courses:

(1) North 89°59'01" East 14.42 feet;

(2) South 15°18'15" West 13.18 feet;

(3) South 74°50'45" East 64.41 feet;

(4) North 70°05'26" East 114.78 feet;

(5) South 84°10'43" East 152.38 feet;

(6) South 18°29'57" West 6.19 feet;

(7) South 78°04'52" East 8.90 feet;

(8) South 68°36'25" East 41.55 feet;

(9) South 77°13'11" East 43.44 feet;

(10) South 83°11'25" East 38.70 feet;

(11) South 73°38'13" East 40.39 feet;

(12) South 89°39'03" East 142.38 feet;

(13) South 66°52'57" East 136.14 feet;

(14) South 68°37'37" East 79.14 feet;

thence South 02°59'01" West 263.34 feet;

thence North 87°00'59" West 23.14 feet;

thence South 02°59'01" West 227.51 feet to the Northerly Boundary Line of said Little Cottonwood East Subdivision;

thence North 87°00'59" West 432.74 feet (North 87°00' West 431.86 feet record) along said Northerly Boundary Line to the point of beginning.

Contains 340,163 Square Feet or 7.809 Acres 13 Lots and 1 Parcel

EXHIBIT B – Standard Operation and Maintenance Inspection Report

**Post-Construction Agreement Checklist**

This report will be used initially by a Sandy City Inspector for Final Bond release and education how to keep the property maintained for Storm Water Quality. This report will also be used, by owner, to inspect the property and provide documentation of all maintenance performed every two years to sandycitystormwater@gmail.com If you have any questions 801-568-7280

Site Contact:				Property Name:			
Date:				Address:			
Frequency of Inspection		<input type="checkbox"/> Biennial (Every two years)					
Item Inspected	Checked		Maintenance Required?		Observations and Remarks		
	Yes	NA	Yes	NA			
<b>Detention/Retention Facilities</b>							
1	Landscaping maintenance						
2	Remove sedimentation/debris						
3	Ensure in good condition side slopes (channeling / sloughing)						
4	Ensure in good condition rip-rap protection						
5	Ensure in good condition control structure						
6	Cleaning of outfall						
7	Maintenance of inlets and outlets						
<b>Storm Drain System</b>							
1	Remove sediment from catch basins						
2	Cleaning storm drainpipes						
3	Maintenance of drainage swales						
4	Remove sediment from manholes/sumps						
5	Ensure in good condition oil/water separator						
6	Ensure in good condition sand filters						
<b>Parking Lot and Roads Maintenance</b>							
1	Sweeping of parking lot						
2	Sweeping of streets						
3	Cleaning of garbage enclosure						
4	Cleaning of non-hazardous spills						
5	Managing fertilizer and pesticide use						
6	Removal of grass after lawn mowing						
<b>Education</b>							
1	Storm Water is not treated	Only Rain Down The Drain		Nothing should go down the drain but rain!			
2	Power Washing	Great Cleaning Option		Must capture water (divert or shopvac)			
3	Biodegradable products	Less hazardous		Won't degrade before impacting wildlife and water quality			

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information provided is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Site Contact

City Use Only	
1	Contact Name
2	Phone Number
3	Email Address
4	Mailing Address



**EXHIBIT C – Post-Construction Storm Water Maintenance Plan and Inspection Schedule (see attached)**

# POST-CONSTRUCTION STORM WATER MAINTENANCE AGREEMENT AND PLAN

*Project:*

**Monte Cristo at LaCaille Property**  
3775 E Little Cottonwood  
Sandy, Utah 84092

*Project Number:* 4978F

*Prepared For:*

**QRD LLC**  
**Chris McCandless**  
9071 South 1300 West, Suite 100  
West Jordan, Utah 84088

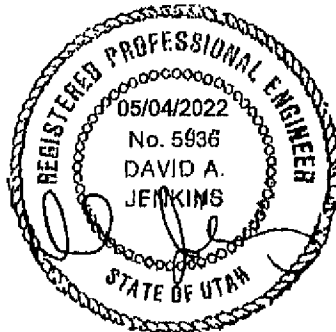
*Date:*

May 4, 2022

*Prepared By:*

**David Jenkins, PE**

**ENSIGN**  
THE STANDARD IN ENGINEERING



**Ensign Engineering**  
45 West 10000 South, Suite 500  
Sandy, Utah 84070  
P: (801) 255-0529  
F: (801) 255-4449  
ensigneng.com

## Long-Term Stormwater Maintenance Plan

for:

Monte Cristo at LaCaille Property  
3775 E Little Cottonwood Lane  
Sandy, Utah

## **PURPOSE AND RESPONSIBILITY**

As required by the Clean Water Act and resultant local regulations, including Sandy City Municipal Separate Storm Sewer Systems (MS4) Permit, those who develop land are required to build and maintain systems to minimize litter and contaminants in stormwater runoff that pollute waters of the State.

This Long-Term Stormwater Management Plan (LTSWMP) describes the systems, operations and the minimum standard operating procedures (SOPs) necessary to manage pollutants originating from or generated on this property. Any activities or site operations at this property that contaminate water entering the City's stormwater system and generate loose litter must be prohibited, unless SOPs are written to manage those activities or operations, and amended into this LTSWMP.

The Little Cottonwood Creek is impaired. The LTSWMP is aimed at addressing these impairments in addition to all other pollutants that can be generated by this property.

## **CONTENTS**

SECTION 1: SITE DESCRIPTION, USE AND IMPACT

SECTION 2: TRAINING

SECTION 3: RECORDKEEPING

SECTION 4: APPENDICES

## **SECTION 1: SITE DESCRIPTION, USE AND IMPACT**

The site infrastructure and operations described in this Section are limited at controlling and containing pollutants that if managed improperly can contaminate the environment. The LTSWMP includes standard operations procedures (SOPs) that are intended to compensate for the limitations of the site infrastructure. The property manager must use good judgment and conduct operations appropriately, doing as much as possible indoors and responsibly managing operations that must be performed outdoors.

### **Impervious Infrastructure, Including Parking, Sidewalk, and Flatwork**

The site has a significant amount of impervious surface, primarily concrete pavement, concrete walkways, and the buildings themselves. Any sediment, debris, fluids or other waste left or that collect on it will be carried by runoff to the storm drain inlets. This waste material will settle in our storm drain system increasing maintenance cost and any material dissolving in the runoff will pass through our system. Maintenance involves regular sweeping, but it can also involve pavement washing to remove stains, slick spots and appearance when necessary. The Sweeping and the Pavement Washing SOPs are used to manage the pollutants associated with pavements.

### **Landscaping**

This property's landscape areas will require regular maintenance. This will involve mowing, pruning, hand digging leaving grass clippings, sticks, branches, dirt, mulch, including fertilizers, pesticides and other pollutants that can fall or be left on our paved areas. It is vital that the paved areas with direct connection to the city storm drain systems remain clear and clean of landscape pollutants. The Landscape Maintenance SOP is written to control and manage this potential problem.

### **Storm Drain System**

Stormwater inlets are located within curb and gutter, parking areas and in the detention basin, away from daily operations. Stormwater inlets direct all runoff through a stormwater treatment unit which are located in the last units prior to leaving the property. The stormwater treatment unit is designed to capture floating material and heavier sediment particles. The stormwater system is susceptible to bypass and scour during large storm event flows and pollutants. The Storm Drain Maintenance SOP is written to control and manage this system.

### **Waste Management**

Each home will have personal trash receptacles. Each trash receptacle will have a lid intended to prevent precipitation exposure minimizing liquids that can leak to pavements and from haul trucks also minimizing the light weight trash exposed to wind. The fences have an additional benefit of trapping loose trash allowing us to pick it up before it will be carried off. Good waste management systems, if managed improperly, can end up as the source of the very pollution that they were intended to control. The Waste Management SOP is written to control and manage our waste.

### **Utility System**

Heating and air conditioner units will be outside of the homes near the patio area. These units contain oils and other chemicals that can harm Little Cottonwood Creek if allowed to drain off our property. Liquids and other waste generated by maintenance of this system can be appropriately managed by the Spill Containment and Cleanup SOP.

### **Snow and Ice Removal Management**

Salt is a necessary pollutant and is vital to ensuring a safe pedestrian walking areas. However, the snow removal operations should be properly managed to minimize unnecessary salt impact.

## **SECTION 2: TRAINING**

Ensure that the HOA and maintenance contractors know and understand the SOPs specifically written to manage and maintain the property. Maintenance contractors must use the stronger of their Company and the LTSWMP SOPs. File all training records in Appendix C.

## **SECTION 3: RECORDKEEPING**

Maintain records of operation and maintenance activities in accordance with SOPs. Mail a copy of the record to Sandy City Stormwater Division annually.

## **SECTION 4: APPENDICES**

Appendix A- Site Drawings and Details  
Appendix B- SOPs  
Appendix C- Recordkeeping Documents



## APPENDIX A – SITE DRAWINGS AND DETAILS

## APPENDIX B – SOPs

## **PARKING AND ROAD MAINTENANCE (SOP)**

### General:

This SOP is not expected to cover all necessary procedure actions. This SOP is allowed to be changed in good judgment when it is necessary for the proper protection and containment of pollutants. Any Changes of routine operations must be amended in this SOP.

**Timing:** Cleaning of the parking areas will include periodic sweeping and garbage pick-up. (Spill Clean-up is covered above). Sweeping must be done in such a way as to minimize the sediment that gets into the storm drain system and with sufficient frequency to keep large amounts of sediment from building up where a large storm event could transport it into a storm drain inlet. The parking areas should be inspected on a monthly basis for the first year to determine proper timing for sweeping and garbage pick-up.

1. Preparation
  - a. Inform HOA of proper parking and road maintenance to reinforce proper housekeeping.
  - b. Restrict parking in areas to be swept prior to and during sweeping using regulations as necessary.
2. Procedure
  - a. Ensure that designated parking areas and drive aisles are clean and clear of debris and sediments.
  - b. Hand sweep sections of gutters in parking areas if soil and debris accumulate.
  - c. Pick-up litter as required to keep parking areas clean and orderly.
3. Clean-up
  - a. Dispose of debris and other materials removed from drive aisles and parking areas properly. Proper disposal of debris and other materials includes placing said materials in the designated dumpsters provided on site. Materials such as oil, batteries, and other hazardous waste must be disposed of at a hazardous waste facility. (Many local auto parts stores will dispose of used oil and vehicle batteries.)
  - b. Do not store waste in locations where storm water could transport fines or liquids into the storm drain system.
4. Documentation
  - a. Document completed cleanup activities in "SMP Inspection Report".
5. Frequency
  - a. Roadways should be swept once every three months and more frequently if inspections deem it necessary. Fall months will require street sweeping a minimum of once a month to prevent plant foliage from entering the storm drain system.
  - b. Parking areas should be swept when inspections deem it necessary.
6. Inspections

- a. Inspections should occur once a month. Fall months will require a weekly inspection to ensure no plant foliage is in danger of entering or blocking the storm drain system.
- b. Inspections should identify any debris, trash or sediment on roadways and parking areas.
- c. Use inspections to ensure all SOPs are being followed.
- d. Use inspection results to alter maintenance frequency if necessary.

## LANDSCAPE MAINTENANCE (SOP)

### General:

This SOP is not expected to cover all necessary procedure actions. This SOP is allowed to be changed in good judgment when it is necessary for the proper protection and containment of pollutants. Any Changes of routine operations must be amended in this SOP.

### Timing:

Clean-up of plant matter and debris should be accomplished after mowing in order to reduce the chance of wind and water carrying the material to the storm water system. A cover shall be placed over the storm drain inlets adjacent to mowing operations or spraying operations in order to keep clippings and chemical spray out of the storm drain system.

Irrigation must be timed to adequately water the landscape and keep it alive not only for aesthetic reasons, but also to reduce erosion of the soils and to keep plant debris to a minimum. Watering heads and watering patterns must be checked weekly for proper operation and to ensure that broken heads are replaced promptly in order to minimize water waste and soil erosion. Lawn areas must be mown weekly to ensure healthy turf and that sprinkler heads are able to spray above the grass. Fertilizers, herbicides and pesticides must be used judiciously but with sufficient frequency to maintain healthy landscaping growth.

### 1. Preparation

- a. Train HOA on proper use of equipment and chemicals.
- b. Make sure your state Chemical Handling Certification is complete and up-to-date before handling any chemicals.
- c. Calibrate fertilizer and pesticide application equipment to avoid excessive application.
- d. Use pesticides only if there is an actual pest problem.
- e. Time and apply the application of fertilizers, herbicides or pesticides to coincide with the manufacturer's recommendation for best results ("Read the Label").
- f. Know the weather conditions. Do not use pesticides if rain is expected within a 24-hour period. Apply pesticides only when wind speeds are low (less than 5 mph).

### 2. Process

- a. Keep clippings away from storm drain system.
- b. Follow the manufacturer's recommendations for mixing, application and disposal of fertilizer and pesticides. ("Read the Label").
- c. Do not mix or prepare pesticides for application near storm drains, preferably mix inside a protected area with impervious secondary containment so that spills or leaks will not contact soils.
- d. Employ techniques to minimize off-target application (e.g. spray drift, over broadcasting.) of pesticides and fertilizers.

### 3. Clean-up

- a. Sweep or blow small clippings into landscape areas, or collect and properly dispose of in designated dumpsters provided on site.

- b. Dispose of large clippings in approved locations or containers per waste management sop.
  - c. Sweep or blow pavements or sidewalks where fertilizers or other solid chemicals have fallen, back onto grassy areas before applying irrigation water. Ensure that all fertilizers or other solid chemicals are completely cleaned off pavements or sidewalks following every application.
  - d. Triple rinse pesticide and herbicide containers, and use rinse water as product. Dispose of unused pesticide as hazardous waste. Do not rinse onto pavements or hardscape areas which may cause a downstream impact.
  - e. Always follow all federal and state regulations governing use, storage and disposal of fertilizers, herbicides or pesticides and their containers. ("Read the Label")
4. Documentation
    - a. Document completed cleanup activities in "SMP Inspection Report".
    - b. Keep copies of MSDS sheets for all pesticides, fertilizers and other hazardous products used.
  5. Frequency
    - a. Landscape maintenance should occur weekly during spring and summer months or whenever inspections deem it necessary.
    - b. During fall months leaves and foliage should be collected when inspections deem it necessary.
  6. Inspections
    - a. Inspections should occur on a seasonal weekly basis when maintenance is occurring.
    - b. Inspections should identify any leaves, clippings, or trimmings left in runoff areas.
    - c. Inspections should identify any possible fertilizers, pesticides or chemicals that may enter storm water system.
    - d. Use inspections to ensure all SOPs are being followed.
    - e. Use inspection results to alter maintenance frequency if necessary.

## WASTE MANAGEMENT (SOP)

### General:

This SOP is not expected to cover all necessary procedure actions. This SOP is allowed to be changed in good judgment when it is necessary for the proper protection and containment of pollutants. Any Changes of routine operations must be amended in this SOP.

### 1. Preparation

- a. Proper disposal of trash includes placing waste materials in the designated trash containers provided on site. Materials such as oil, batteries (no alkaline), ink jet cartridges, cell phones, paint, etc., are considered household hazardous waste and

- must be disposed of at the Household Hazardous Waste (HHW) facility at the Trans-Jordan Landfill.
- b. During collection hours ensure that
  - c. Residents do not park vehicles near collection container.
2. Process
- a. Perform regular inspections of dumpster container for leaks, and have repairs made immediately by responsible party.
  - b. Request/use dumpsters with lids and without drain holes.
  - c. Do not overfill container so that the lid will not close.
  - d. Keep lid on container closed to prevent trash from blowing out or container filling with water.
3. Clean-up
- a. Keep areas around garbage container clean of all garbage and debris.
  - b. Have garbage container emptied regularly to keep from overflowing. Special caution should be used for all lightweight trash because in the case of strong winds, this lightweight trash may be blown out of the garbage container. In this case, clean-up may be needed in roadways and/or landscape areas due to wind-blown debris.
  - c. Wash out dumpsters as needed to keep odors from becoming a problem. Wash water must not enter into any storm drain system.
4. Documentation
- a. Document completed cleanup activities in "SMP Inspection Report".
5. Frequency
- a. Waste management should be ongoing at all times. HOA should ensure all waste is disposed of in dumpster container and ready for pickup.
6. Inspections
- a. Inspections should occur once a month.
  - b. Inspections should identify any damage to garbage containers, any cracks or holes which may allow waste to leak into roadways. (Replace container when necessary)
  - c. Inspections should ensure garbage container is being used properly without overflowing container and lid is closed.
  - d. Use inspections to ensure all SOPs are being followed.

## **STORM WATER CONVEYANCE SYSTEMS (SOP)**

### **General:**

This SOP is not expected to cover all necessary procedure actions. This SOP is allowed to be changed in good judgment when it is necessary for the proper protection and containment of pollutants. Any changes of routine operations must be amended in this SOP.

**Timing:** All storm drain structures should be inspected for sediment and debris build-up at a minimum of one time per year, but is best to be completed monthly.

Disposal: Material removed from the storm drain structures must be disposed of in a landfill.

1. Preparation
  - a. Inform owners and management that storm water systems cannot be used for disposing of materials.
  - b. Do visual inspection on outside of grate.
  - c. Check for broken parts of the system that may need to be replaced.
  - d. Do visual inspection inside cleanout boxes. (DO NOT ENTER ANY MANHOLE OR CLEANOUT BOX)
2. Process
  - a. Remove any large loose debris and sorbent materials with hand tools.
  - b. Clean system (pipes and boxes) using a high powered vacuum truck to suck out standing water and sediment.
  - c. Use a high pressure washer to break up any remaining material in the catch basins and cleanout boxes, while capturing resulting slurry with vacuum.
  - d. Once catch basins and clean out boxes are clean, clean any sediment that may remain within the pipes.
3. Clean-up
  - a. When vacuum truck is full of sediment take it to designated locations to dump all sediment out of the truck into a drying bed.
  - b. Wash down area before leaving the designated dump location.
4. Documentation
  - a. Document completed cleanup activities in "SMP Inspection Report".
  - b. Record the amount of waste collected and number of catch basins cleaned and the area they were cleaned in. Keep any notes or comments of any problems encountered.
5. Frequency
  - a. Use inspection results and clean storm drain system when necessary.
6. Inspections
  - a. Inspections should occur twice a year or after a large storm event for the storm drain system.
  - b. Inspections should identify any flow obstructions, or damage to the system.
  - c. Inspections should identify any sediment buildup in pipes and clean out boxes. If more than 2" of sediment and debris is present in pipes or boxes then maintenance is needed.
  - d. Use inspections to ensure all SOPs are being followed.
  - e. Use inspection results to determine maintenance frequency.

## **SPILL RESPONSE (SOP)**

General:



This SOP is not expected to cover all necessary procedure actions. This SOP is allowed to be changed in good judgment when it is necessary for the proper protection and containment of pollutants. Any changes of routine operations must be amended in this SOP.

**Timing:** In the event of a fuel, oil, or chemical (including herbicides, pesticides and fertilizers) spill, timely clean-up is important for protection of the storm water system. All spills must be cleaned up immediately.

1. Preparation
  - a. Understand Material Safety Data Sheet (MSDS) for handling of product.
  - b. Supervisors ensure that HOA handling and transporting chemicals are trained on the proper procedures.
  - c. Determine proper place of handling.
  - d. Have necessary containment and spill kits at handling place
  - e. Have proper Personal Protective Equipment (PPE) available and wear it prior to handling chemicals as necessary or as required.
2. Process
  - a. Wear proper PPE for the chemical being used, transported or handled.
  - b. Begin transfer or handling process.
  - c. Discontinue process if spills occur.
  - d. Disconnect and store handling equipment.
3. Clean-up
  - a. Do not wash spill down the storm drain.
  - b. Clean up spills with proper material using dry methods or other means that will pick the spill up. The dry method includes using sorbent materials, broom and shovel, and vacuum operations. If using water and/or detergents to clean the spilled material, this waste must be vacuumed or effectively picked up by other methods.
  - c. Dispose of contaminated material at appropriate facility. Appropriate facilities include dumpsters and receptacles so long as waste is solid at time of disposal. Liquid waste may be disposed in the sanitary sewer system after the following conditions have been met:
    - i. Dry cleanup methods have been used to remove the bulk of the spill and disposed per the Waste Management SOP.
    - ii. The liquid waste amounts are small and diluted with water. This is intended for spill cleanup waste only and never for the disposal of unused or spent liquids.
4. Documentation
  - a. Document completed cleanup activities in “SMP Inspection Report”.
5. Frequency
  - a. Spill response should occur after every spill event.
6. Inspections
  - a. Inspections should occur after every spill response event.
  - b. Use inspections to ensure all SOPs are being followed.

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## PAVEMENT WASHING OPERATIONS

### General:

These SOPs are not expected to cover all necessary procedure actions. Operators are allowed to adapt SOPs to unique site conditions in good judgment when it is necessary for safety, and the proper, and effective containment of pollutants. However, any changes of routine operations must be amended in these SOPs.

### 1. Procedure:

- a) Prevent waste fluids and any detergents if used from entering storm drain system. The following methods are acceptable for this operation:
  - Dam the inlet using a boom material that seals itself to the pavement and pick up the wastewater with shop-vacuum or absorbent materials.
  - Collect wastewater with shop-vacuum simultaneous with the washing operation.
  - Collect wastewater with vacuum truck or trailer simultaneous with the washing operation.
- b) This procedure must not used to clean the initial spills. First apply the Spill Containment and cleanup SOP.

### 2. Disposal Procedure:

- a) Small volumes can usually be drained to the local sanitary sewer. Contact the South Valley Sewer District.
- b) Large volumes must be disposed at regulated facilities.

### 2. Pavement Cleaning Frequency:

- a) There is no regular pavement washing regimen. Pavement washing is determined by conditions that warrant it, including but not limited to prevention of slick or other hazardous conditions or restoring the acceptable appearance of pavements.

### 3. Training:

- a) Annually and at hire.

## **SNOW AND ICE REMOVAL MANAGEMENT**

### **General:**

This SOP is not expected to cover all necessary procedure actions. Operators are allowed to adapt SOPs to unique site conditions in good judgment when it is necessary for safety, and the proper, and effective containment of pollutants. However, any changes of routine operations must be amended in this SOP.

### **1. Application:**

- a) Parking and sidewalk winter management operations.

### **2. De-Icing Procedure:**

- a) Do not store or allow salt or equivalent to be stored on outside paved surfaces.
- b) Minimize salt use varying salt amounts relative to hazard potential.
- c) Sweep excessive piles left by the spreader.
- d) Watch forecast and adjust when warm ups are expected the same day.

### **3. Training:**

- a) Annually and at hire.
- b) Require snow and ice service contractors to follow the stronger of this SOP and their company SOPs.

## GENERAL CONSTRUCTION MAINTENANCE

### General:

This SOP is not expected to cover all necessary procedure actions. Operators are allowed to adapt SOPs to unique site conditions in good judgment when it is necessary for safety, and the proper, and effective containment of pollutants. However, any changes of routine operations must be amended in this SOP.

**Rule:** Prevent any solids, \*liquids or any light weight material from being carried away from the construction or maintenance envelop by wind or water.

\*liquids - including culinary water and irrigation water that are polluted with material that will damage the environment.

### 1. Application:

- a) This SOP should provide sufficient direction for many of the general operations, e.g., building maintenance, curb/sidewalk/flatwork, overlay/patching, landscape renovations, miscellaneous maintenance/repairs, etc.

### 2. Construction Procedure:

- a) Remove or contain all erodible or loose material prior to forecast wind and precipitation events or before non-stormwater will pass through the project site. For light-weight debris, maintenance can require immediately attention for wind events and many times daily maintenance or as needed for precipitation or non-stormwater events.
- b) Project materials and waste can be contained or controlled by operational or structural best management practices.
  - Operational; including but not limited to:
    - Strategic staging of materials eliminating exposure, such as not staging on pavement;
    - Avoiding multiple day staging of backfill and spoil;
    - Haul off spoil as generated or daily.
  - Structural; including but not limited to:
    - Inlet protection, e.g. wattles, filter fabric, drop inlet bags, boards, planks;
    - Gutter dams, e.g. wattles, sandbags, dirt dams;
    - Boundary containment, e.g. wattles, silt fence;
    - Dust control, e.g. water hose;
    - Waste control, e.g. construction solid or liquid waste containment, dumpster, receptacles.
- c) Inspect often to insure the structural best management practices are in good operating condition and at least prior to the workday end. Promptly repair damaged best management practices to achieve effective containment.

- d) Cleanup:
    - Use dry cleanup methods, e.g. square nose shove and broom.
    - Wet methods are allowed if wastewater is prevented from entering the stormwater system, e.g. wet/dry vacuum, disposal to our landscaped areas.
  - e) Cleanup Standard:
    - When a broom and a square nosed shovel cannot pick any appreciable amount of material.
3. Waste Disposal:
- a) Dispose of waste according to General Waste Management SOP, unless superseded by specific SOPs for the operation.
  - b) Never discharge waste material to storm drains.
4. Equipment:
- a) Tools sufficient for proper containment of pollutants and cleanup.
  - b) Push broom and square blade shovel should be a minimum.
5. Training:
- a) Annually and at hire.

## APPENDIX C – PLAN RECORDKEEPING DOCUMENTS

*[Insert PLAN Recordkeeping forms following this page.]*

### MAINTENANCE/INSPECTION SCHEDULE

Frequency	Site Infrastructure.
	Replace text with the infrastructure / system that must be maintained; repeat

Inspection Frequency Key: A=annual, Q=Quarterly, M=monthly, W=weekly,  
S=following appreciable storm event, U=Unique infrastructure specific (specify)

#### RECORD INSPECTIONS IN THE MAINTENANCE LOG

Inspection Means: Either; Traditional walk through, Awareness/Observation, and during regular maintenance operations while noting efficiencies/inefficiencies/concerns found, etc.

**MAINTENANCE LOG**

Date	Maintenance Performed/Spill Events. Perform Maintenance per SOPs	Observation Notes, including but not limited to; Inspection results, Observations, System Performance (effectiveness/inefficiencies), SOP Usefulness, Concerns, Necessary Changes...	Initials

Contact the Stormwater Division for an example of a maintenance/inspection log xxx-xxx-xxxx

Annual Summary of LTSWMP effectiveness, inefficiencies, problems, necessary changes etc.

\*You may create your own form that provides this same information or request a word copy of this document.



## Annual SOP Training Log per Section 2

SOP	Trainer	Employee Name / Maintenance Contractor Co	Date

\*You may create your own form that provides this same information or request a Word copy of this document.