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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TRAILSIDE RESERVE SUBDIVISION

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION FOR the Trailside Reserve Subdivision. ("Declaration") is promulgated by the Trailside Twinhomes Midvale, LLC, a Utah limited liability company ("Declarant"), and becomes effective when recorded with the Salt Lake County Recorder's Office.

## RECITALS

- A. The Trailside Reserve Subdivision is located in Midvale, Salt Lake County, Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Project").
- B. The Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project, subject to the following covenants, conditions, restrictions, easements, and limitations herein set forth which are hereby declared to be for the benefit of the whole tract and all of the Project described herein and the owners thereof, their successors and assigns.
- C. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration.
- D. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land.
- E. The Association shall be incorporated as a Utah nonprofit corporation and shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time.
- F. The Association shall be subject to the Utah Community Association Act (Utah Code 57-8a-101, *et. seq.*) and shall be entitled to the rights, obligations, and benefits if this act as may be amended from time to time.
- G. Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Property to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce the Trailside Reserve Subdivision Homeowners Association, Inc. ("Association"). The Association is governed by the terms of this Declaration, the Articles, and the Bylaws of Trailside

14363874 B: 11559 P: 7079 Total Pages: 38  
03/28/2025 12:23 PM By: BORDON Fees: \$40.00  
Rashelle Hobbs, Recorder Salt Lake County, Utah  
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Reserve Subdivision Homeowners Association, Inc.

- H. No provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant' reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) annexation or de-annexation of additional property to the Project; (3) use of any Lot owned by the Declarant as a temporary sales office or model; (4) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; and (5) assignment of Declarant' rights under this Declaration in whole or part.

(F) These Recitals are made a part of this Declaration.

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions and easements shall apply to and be binding on the Project:

### **I. DEFINITIONS**

1.1. **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Annexable Property** shall mean all real property described in Exhibit "A" of this Declaration, as amended.

1.3. **Declaration** shall have the meaning as set forth in the Recitals.

1.4. **Assessments** shall mean any monetary charge, fine, or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a **regular** assessment, special assessment, limited assessment, individual assessment, reserve assessment, capital improvement assessment, late fee, or other charge.

1.5. **Architectural Review Committee** or **AR Committee** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.6. **Association** shall mean and refer to the Trailside Reserve Subdivision Homeowners Association, INC., a Utah non-profit corporation, and as the context requires, the officers or directors of that Association.

1.7. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.



1.8. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.9. **Committee** or **Architectural Review Committee** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.10. **Common Areas** shall mean and refer to the entire Property that is not included within the Lots, which is owned by the Association for the common use and enjoyment of the Owners. Common Areas are described on the Plat, including but not limited to, fences, landscaping, sidewalks, underground detention ponds, and parking areas, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines, landscape easements serving two or More Living Units and personal property owned by the Association when the context so requires, all of which are not included within the dimensions of any Living Unit or the exteriors of the Living Unit (excluding the front porches and rear patios).

1.11. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.12. **Declarant** shall mean and refer to Trailside Twinhomes Midvale, LLC and its successors and assigns. "Declarant Related Entity or Entities" shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant's members for the purpose of owning, developing, constructing, and/or selling Lots or Living Units in the Project

1.13. **Development** or **Project** shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.14. **Director** shall mean and refer to an individual member of the Board of Directors.

1.15. **Governing Documents** or **Project Documents** shall mean and refer to the Declaration, Articles of Incorporation, Bylaws, plat maps, and any rules, regulations, policies, and resolutions adopted by the Board.

1.16. **Limited Common Areas** shall mean and refer to those Common Areas designated on the Plat as reserved for the use and benefit of a designated Lot to the exclusion of other Lot Owners. Limited Common Areas include the designated parking spaces, driveways, front porches, covered or uncovered, entries to units, rear patios, and the exterior of fences separating Lots from the Common Area.

1.17. **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy of a single residence, or less than all of the residences, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence whether located within or without said Living Unit. All pipes, wires, conduits, or other public utility installations serving only that Living Unit shall be considered part of the Living Unit

1.18. **Lot** shall mean and refer to each of the individual lots within the Trailside Reserve Subdivision project, as shown on the Plat, with the exception of the Common Areas.

1.19. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.20. **Member** shall mean and refer to a Lot Owner.

1.21. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes but is not limited to, all lessees, tenants, and family members, agents, and representatives living, dwelling, or staying in a Living Unit.

1.22. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.23. **Party Wall** is further detailed in this Declaration.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee simple or an undivided interest in any Lot or Living Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legal entity recognized by Utah State law. Accordingly, such an Owner may designate a natural person of its selection as Owner's agent to serve and act in the Owner's place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time.

1.25. **Plat** shall mean and refer to the official subdivision plats of Trailside Reserve Subdivision, filed and recorded in the official records of the Salt Lake County Recorder's Office.

1.26. **Property** shall mean and refer to all of the real property, which is covered by a Plat.

1.27. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.28. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board.

1.29. **Subdivision** shall mean and refer to the entire residential development and/or planned residential unit development, which is created and covered by a Plat.

1.30. "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof

## **II. PROPERTY DESCRIPTION**

2.1. **Submission**. The Property, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration, consists of the real property situated in Salt Lake County, State of Utah described as follows:

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

2.2. **Name**. The Project, as submitted to the provisions of this Declaration, shall be known as Trailside Reserve Subdivision.

2.3 **Description of Lots**. The Projects consists of 68 Lots, each of which includes a Living Unit and other improvements authorized on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4 **Common Areas**. The Common Areas of the Project shall be and are the fences, landscaping, sidewalks, parking areas, and driveways, not included within the dimensions of any Unit, and any and all other Common Areas designated as such on the Plat, and any other future interests in Common Areas pursuant to the terms of this Declaration. A Lot Owner shall be entitled to the use and enjoyment of the Common Areas within the Project.

## **III. MEMBERSHIP AND VOTING RIGHTS**

3.1. **Membership**. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in

the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of their Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** The Association shall initially have the following two classes of votes:

(a) **Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to 10 votes for every Lot owned by Declarant plus 10 votes for every Class A vote. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last lot.

After turnover, Owners shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Voting is limited to one (1) vote per Lot.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose other than to determine whether a quorum exists.

3.4. **Record of Ownership / Reinvestment Fee.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association, with a reinvestment fee of .5% of the purchase price of the Lot, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage, and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Section 5.6.

#### **IV. PROPERTY RIGHTS IN COMMON AREAS**

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Unit and not to other Limited Common Areas. Members and Maintenance Crews shall have the right to cross Limited Common Area to maintain portions of any unit and any unit's private fenced in areas.

4.2. **Title to Common Areas.** The Declarant has conveyed title to the Association on various Common Areas.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities situated upon the Common Areas.

(c) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

(d) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water, and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the Lot Owners. The Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Common Areas/Limited Common Areas, consistent with the Declaration and Utah law.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in Article IV, Section 4.3 above.

4.5. **Compliance with Covenants and Restrictions and Rules and Regulations.**

Each Owner and Owners' guests shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area. Further, each Owner and Owners' guests shall fully and faithfully comply with the rules, regulations, and restrictions applicable to use of the Common Area, as such rules, regulations, and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

**V. ASSOCIATION & ASSESSMENTS**

5.1 **Organization.** The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Property and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot and is transferable only in conjunction with the transfer of the title to a Lot. The Association shall serve as the organizational body for all Owners.

5.2 **Enforcement Powers.** The Association shall have all powers granted to it by the Governing Documents to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law. In the event the Association fails to exercise any power granted in this Article, the Association shall have the right to exercise enforcement powers.

- (a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.
- (b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Documents, whether or not such action results in



the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessments in any manner authorized in the Governing Documents or Utah law.

- (c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

5.3 **Association Rules.** The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal, and enforce Rules governing the Property.

- (a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

5.4 **Violation Deemed a Nuisance.** Any violation of the Governing Documents that is permitted to remain in the Townhomes is deemed a nuisance and is subject to abatement by the Association.

- (a) Any single or continuing violation of the covenants contained in these Governing Documents may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.
- (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist under common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Declaration and at law or equity generally are not to be considered exclusive, but rather cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

5.5 **Fines.** Following notice as required by the Act, the Association shall have the power to assess a fine against the Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

5.6 **Hearing Process.** The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

5.7 **Assessments.** Assessments will be made to meet the anticipated and recurring costs, expenses, and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Townhomes, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with their interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest, and costs of collection (including reasonable attorney fees).

- (a) All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint, and several obligations of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt themselves or their Lot from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest, and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.
- (b) **Special Assessment.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.
- (c) **Individual Assessment.** The Association may levy individual assessments on every Lot, Owner, or occupant that shall cause any damage to the Property or otherwise cause the Association to incur any individual expense for maintenance, repairs, or

enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance, or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

- (d) Lot Type Assessments. Lot Type Assessments will be made to meet the anticipated and recurring costs, expenses, and Common Expenses of a specific housing project that includes varying maintenance, insurance, and reserve needs different from other housing products in the Property.
- (e) Reserve Fund. The Association may levy a reserve fund assessment, as set forth in this article.
- (f) The Association may levy other assessments or fees, as authorized by the Governing Documents.

5.8 **Date of Commencement of Assessments.** Assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant' members, for the purpose of constructing Living Units on the Lot (collectively "Declarant' Related Entities") shall not commence until the completed Living Unit is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

5.9 **Statement of Account & Payoff Information.** Upon a written request from an Owner that the Association provide the Owner with a statement of their account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of their Lot, the Association may charge a fee not to exceed \$50.00.

5.10 **Payment by Tenant.** The Association shall be entitled to demand and collect from a tenant of any Lot the amount of any assessment that is more than sixty (60) days past due.

5.11 **Delinquent Assessment.** Any assessment not timely paid shall be delinquent, and the Association may invoke all remedies to recover said delinquent assessments including by suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

5.12 **Due Date, Charges & Interest.** Unless otherwise established by the Board through adopted policies, monthly assessments shall be due and payable on the first of each month and late if not received by the 15th of each month. The Board may charge a late fee in an amount set by the Board. In addition to late fees, interest at 18% per annum may accrue on all unpaid balances. The Board may also impose other reasonable charges imposed by a Manager related to collections.

5.13 **Lien.** Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

5.14 **Appointment of Trustee.** The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot, and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Declaration.

5.15 **Foreclosure Sale.** The Association shall have all the rights and power of foreclosure granted by the Act, both judicially and non-judicially. The Association may also bid for the Lot at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which 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 charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a monetary judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

5.16 **Other Remedies.** All rights and remedies of the Association shall be cumulative, and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The “One Action Rule” shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

5.17 **Attorney Fees.** In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

5.18 **Budget.** The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

- (a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than the previous budget.
- (b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

5.19 **Reserve Fund Analysis.** Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing, or restoring Common Areas that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

5.20 **Reserve Fund Account Creation.** The Association shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

## **VI. DUTIES AND POWERS OF THE ASSOCIATION**

6.1. **General Powers and Obligations.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

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

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

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

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

(e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.2. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.



(c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to ensure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

(f) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(g) **Employment of Agents, Advisers, and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel, and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Property. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be terminable by the Association upon no more than sixty (60) advanced notice.

(h) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. The Association shall not commence any litigation without prior approval of the majority of the Members if the litigation shall exceed the cost of five thousand dollars (\$5,000.00) either in attorney fee expenses or in costs (including any expert reports).

6.3. **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have acted recklessly, willfully, or intentionally in carrying out his/her duties.

6.4. **Board of Directors.** Except where a matter or vote is specifically reserved to the Owners, the Board of Directors shall act in all instances on behalf of the Association.

6.5. **Proceedings.** The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation, or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain, and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (1) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (2) to otherwise enforce compliance with the Declaration, Bylaws, or Rules and Regulations of the Association, or to obtain other relief from, any Owner who has violated any provision thereof, or (3) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association, and in the ordinary course of business, or (4) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate, shall be referred to herein as an "Operational Proceeding". The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis, and consent; to protect the Board and individual members of the Board or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

1. The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. The good faith negotiations shall include a written notice that shall include an explanation of the nature of the claim, a specific breakdown and calculation of any alleged damages, a specific description of the claim along with any supporting evidence upon which the claim is based, photographs of any alleged condition, if applicable, and one hundred eighty (180) days to cure or resolve the claim. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in

connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of two-thirds (2/3) of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

a. The Board shall first investigate the legal merit, feasibility, and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney, expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors, and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$5,000.00 limit, with the express consent of two-thirds (2/3) of all of the Members of the Association, at a special meeting called for such purpose.

b. Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation, and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

c. Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members.

The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (1) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (2) Specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (a) if less than two-thirds (2/3) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (b) if two-thirds (2/3) of the total voting power of the Association affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys' fees and costs incurred to date in connection therewith.

d. In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain, and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

(d) Any post-turnover litigation involving the Association (as Plaintiff) and the Declarant shall strictly comply with each of the provisions of this Section 6.5. The parties hereby covenant, stipulate, and agree that in the event the Association fails to satisfy the prerequisites set forth herein, the Association will indemnify, defend, hold harmless, and exculpate Declarant to the fullest extent permissible by law, and Declarant shall be entitled to recover any and all attorney's fees and costs expended as a result of enforcing this provision 6.5., which fees and costs may include, without limitation, pre-litigation attorney's fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The parties further covenant, stipulate, and agree that failure to comply with section 6.5 herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

(e) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section 6.5, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 6.5, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.5 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section 6.5 may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section 6.5 or any portion hereof, without both of such express prior written approvals shall be void.

## **VII. COMMON AREAS, LIMITED COMMON AREAS, LIVING UNIT & PARTY WALL MAINTENANCE**

7.1 **Common Areas.** Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain, repair, and replace all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate.

(a) The Association, or its duly designated agent, shall maintain all Common Areas



including, without limitation, the landscaping located outside of the Living Unit footprint and on the Common Area in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Declaration. The Association may adopt Rules to add further detail with regard to specific landscape maintenance services provided by the Association. Notwithstanding, it is the intent that the Association shall generally provide for all landscaping within the Association.

- (b) **Snow Removal.** The Association may adopt Rules to add further detail with regard to specific snow removal services provided by the Association. Notwithstanding, it is the intent that the Association shall generally provide for all snow removal in the Common Areas. The Association may make reasonable and prudent efforts to contract with a third party for the removal of snow from Common Areas within the Property. Unless the Board elects to provide snow removal for Limited Common Areas, Owners shall be responsible for such areas and other applicable areas on their Lot, including, but not limited to sidewalks immediately adjacent to or primarily serving an Owner's Lot and parking facilities within their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow may be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Association shall not be responsible for or liable for said third party's discretion and removal of snow.

7.2 **Limited Common Areas.** Owners shall maintain the Limited Common Areas.

7.3 **General Rules of Law to Apply to Party Walls.** Each wall which is built as a part of the original construction of a Living Unit within the Project and placed on the dividing line between two Living Units shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.4 **Party Wall Maintenance.** Each Living Unit that shares one or more Party Wall(s), will also share elements of a common roof, a common exterior wall, or other common exterior elements with adjacent Living Unit(s). The Owners acknowledge that certain repairs or maintenance to Living Units with a Party Wall(s) may become necessary, which repairs, or maintenance may not be able to be performed on one Living Unit only.

7.5 **Destruction of Party Wall; Common Roof or Exterior.** If a party wall or common improvement is damaged or destroyed by the fault of negligence of one of the Owners, such damage shall be repaired by the Association to the condition equal to or better than immediately prior to the damage and the negligent Owner or Owner at fault shall reimburse the



Association for all costs incurred by the Association to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Living Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the owners of the two affected Living Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Living Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Living Unit, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Living Units.

7.6 **Party Wall Insurance.** The existence of Party Walls within the Project will require blanket property insurance coverage as required by the Governing Documents and/or Act on all attached Living Units.

7.7 **Association Maintenance of Living Units.** The Association shall maintain, repair, and replace the roofs, shingles, rain gutters, and downspouts for all buildings (which include the Living Units), and the normal wear and tear on exterior wall finishes of the buildings (which include the Living Units). All necessary structural repairs of roofs and exterior walls will remain the financial responsibility of the affected Owners but may be organized and/or carried out by the Association, as determined by the Association. Exterior wall maintenance by the Association does not include doors, doorframes, garage doors, windows, window frames, window wells, skylights, patio doors, or glass of any kind. All other components or Improvements within the Lot, including the Living Unit, that are not specifically assigned to the Association herein shall be maintained by Owners. It is the obligation of each Owner to maintain their Lot and Improvements located thereon in a clean and sanitary condition and uncluttered in order to preserve and enhance the enjoyment of the Project.

7.8 **Association Maintenance of Lots.** To the extent landscaping outside of the Living Unit falls within the boundaries of a Lot instead of Common Area, the Association shall perform the maintenance responsibilities set forth in Article 8.1 on the Lot outside the footprint of the Living Unit.

7.9 **Repairs by Association.** In the event that an Owner permits their Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on

the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

7.10 **Alterations of Exterior Appearance.** The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements, or remodeling, whether structural or changes in landscaping, paint color, or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

7.11 **Repair Following Damage.** In the event of casualty loss or damage to the improvements, the Improvements may be constructed as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

## **VIII. INSURANCE**

8.1. **Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

### **8.2. Property Insurance.**

(a) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings

including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

1. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

2. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.

3. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) “Inflation Guard Endorsement,” if available, (ii) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) “Equipment Breakdown,” if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

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

1. the Association’s policy provides primary insurance coverage;

2. Notwithstanding Subsection 8.2.(a)(1) above, and subject to Subsection 8.2.(b)(3) below:

- a) the Owner is responsible for the Association's policy deductible; and
- b) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

3. An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Living Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

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

(c) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

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

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

8.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area

or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any Fair Housing Act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. At the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

8.5. **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (c) officers, directors, and employees of any manager of the Association, and (d) coverage for acts.

8.6. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

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

8.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be insured under all property and CGL insurance policies.

8.9. **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance



proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.10. **Insurance Trustee.** At the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of the Allocated Interest, the Board of Directors shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board of Directors (as the case may be) shall require.

8.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.12. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

8.13. **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, Board of Directors may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board of Directors shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.

8.14. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8a-401 through §57-8a-407, and any amendments



thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

## **IX. USE RESTRICTIONS**

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with Living Units and are restricted to such use. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family residence. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable local ordinances. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like belonging to Owners or other residents of the Property shall be parked within the Development, not to exceed forty-eight (48) hours. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, Private Street or other Common Areas, except for emergency repairs to vehicles. Any motor recreational vehicle must be kept in an enclosed garage. The Association may adopt rules further governing parking and vehicles storage in the Project.

9.5. **Pets.** No animals shall be kept in the Project except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animals shall be kept. No more than two household pets may be kept in any Unit without the written permission of the Association. No pets shall be permitted to run loose upon the Common Areas.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.

9.7. **Nuisances.** No rubbish or debris of any kind shall be placed upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of Occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Smoking in Common Areas is considered a nuisance and is expressly prohibited.

9.8. **Signs.** No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except such signs as may be required by legal proceedings, or a "For Sale" or "For Rent" sign, to the extent permitted, and in conformance with the Rules and Regulations promulgated by the Board.

9.9. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained so as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to affect such collection.

9.10. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is not required to, enter a Living Unit to ensure that it is in compliance with this Section and Section 9.11 below. Smoking is allowed except in common and limited common areas

9.11. **Unit Heating.** Owners shall heat Units to no less than fifty degrees (50° F) at all times to prevent pipes from freezing.

9.12. **Parking.** No parking is allowed on roadways or streets within the Project boundaries. This prohibition on parking on roadways and streets is for all vehicles, including but not limited to, automobiles, trucks, buses, tractors, camping vehicles, boats, bus trailers, snowmobiles, mobile homes, two, three, or four wheeled motor vehicles, or other wheeled vehicles, shall be permitted to be parked on any private street. Furthermore, the Board of Directors is authorized to adopt and implement reasonable rules and regulations pertaining to parking within the Project boundaries. The Board of Directors may hire at their discretion a third party parking enforcement company to enforce any rules and regulations.

9.13. **Renting of Living Units.** Notwithstanding anything to the contrary contained in this Declaration, the leasing or renting of any Living Unit within the Project shall be governed by this Section. An Owner may "rent" his/her Living Unit subject to the limitations and requirements of this Section. For the purposes of this Section only, the term "rent" in any grammatical form includes leasing, subletting, or otherwise permitting or allowing someone other than an Owner to reside in a Living Unit in exchange for legal consideration payable to the Owner or to others at the Owner's request or direction or allow others to reside therein alone for charitable purposes without the owner in residence. No Living Unit may be rented for a period of less than six (6) consecutive months and an Owner may not rent less than the entire Living Unit. A Living Unit may not be rented except by written agreement that requires the tenants to abide by the Governing Documents and specifically provides that a violation of any provision of the Governing Documents is a breach of the rental agreement. A copy of the rental agreement shall be provided to the Board upon request. The Board may adopt by resolution, Rules that establish the contents or exact form of rental agreements, and any other Rules deemed necessary by the Board to implement this Section. Pursuant to Rules adopted under this Section, if the Board determines that a tenant has violated a provision of the Governing Documents, after notice and an opportunity for a hearing as provided by the Act, the Board may assess fines against the Owner and/or require an Owner to terminate a rental agreement. No Owner may purchase more than one (2) Living Units within the Project. No more than twenty five percent (25%) of the Living Units can be used as rentals within the community at a given time.

9.14. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on patios. Said patio furniture shall conform with standards set by the Architectural Committee.

9.15 **Zoning Regulations.** The lawfully enacted zoning regulations of City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Dwelling may be occupied in a manner that is in violation of any statute, law, or ordinance

## **X. ARCHITECTURAL CONTROLS**

10.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Property harmonize with existing surroundings and structures (herein the "Committee"). The Committee need not be composed of Owners. If such a Committee is not appointed, the Board shall perform the duties required of the Committee.

10.2 **Design Guidelines.** The Declarant and/or ACC may adopt Design Guidelines that are consistent with the Development Agreement but may include additional detail and restrictions

10.3. **Architectural Controls.** Notwithstanding any other provision to the contrary, no Owner shall make structural alterations or modifications to his Unit or to any of the Common Areas or Limited Common Areas, including but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other materials in the windows of his Unit or other exterior attachments and signs or other advertising devices without the written approval of the Association. The Association shall not approve any alterations, decorations, or modifications

which would jeopardize or impair the soundness, safety, or appearance of the Project. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board of Directors. The Board of Directors or Committee may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board of Directors or Committee. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, windows, skylights, venting, and the like. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

10.4. **Liability for Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to Article X.

10.5 **Limitations on Review.** The ACC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ACC prior to construction.

10.6 **Architectural Review Fee.** The ACC may charge a fee to an Owner submitting a plan for review not to exceed the actual costs to review the plans.

10.7 **Exception for Declarant and Declarant Related Entities.** The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant or Declarant Related Entities on any Dwelling or on any part of the Common Areas and which occurs at any time during Class B Control Period.

10.8 **Approved Builder.** During the Class B Control Period, only contractors approved in advance by Declarant, in their sole discretion, may construct Improvement(s) upon the Dwellings.

## **XI. ENFORCEMENT**

The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees.

Notwithstanding the provisions of this Section, this Section shall not apply to any Non-Operational Controversy, as parties to any Non-Operational Controversy shall bear their own attorney fees and costs.

## **XII. DECLARANT RIGHTS**

12.1. Administrative Control of Association. The Class "B" Control Period runs until after the first to occur of the following:

(a) 180 days after the Declarant no longer owns any Lot or land within the Property or Annexable Property; or

(b) When, at its discretion, the Class B Member so determines. Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Property, it does not waive any reversionary or remaining control as to all other portions of the Property, the control of which is not expressly terminated by Declarant.

12.2. **Other Rights.** In addition to any other rights under the Governing Documents, as long as Declarant owns at least one (1) Lot within the Project, Declarant:

(a) **Sales Office.** Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) **"For Sale Signs."** May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Project, including without limitation, the Common Area.

(c) **Declarant Exemption.** Unless specifically and expressly bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

### **12.3. Easements Reserved to Declarant.**

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

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters, and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

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



such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over, and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities

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

(f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

12.4 **Easements for Construction and Development Activities.** Declarant reserves easements and rights of ingress and egress over, under, along, across, and through the Property and the right to make such noise, dust, and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units, (b) to maintain sales or leasing offices, management offices, and models throughout the Property and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Property, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property.

12.5 **Right to Modify Lot Boundaries and Interior Boundary Lines.** Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Living Units so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

12.6 **Income generated from negotiation, installation or provision of certain utilities and amenities.** Declarant and/or Declarant Related Entities invest time, experience, infrastructure and/or capital in the negotiation, provision or installation of certain utilities and amenities (e.g., internet, cable, fiber, phone, solar power, etc.) that provide services and



benefits to owner in the Property that would not otherwise be available or at a reduced cost. Any income gained by these parties from these efforts may be retained by the Declarant, Declarant Related Entities, or their assigns, even after the Class B Control Period. The Association may enter into contracts with third parties related to the provisions of such utilities and amenities for the benefit of Owners in the Property, which utilities and amenities may be paid for through Assessments. Owners contracting separately with individual third-party providers will still be required to pay any normal and customary access fee for applicable bulk rate contract services entered into by the Association.

#### **XIV. RIGHT OF ENTRY**

The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

#### **XV. MISCELLANEOUS**

15.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest email or mailing address for such person appearing in the records of the Association at the time of mailing. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes.

15.2. **Amendment.** At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants contained herein can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association and the approval of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners. 15.3.

15.4. **Dissolution.** Subject to the restrictions set forth in Article XIII of this Declaration pertaining to Mortgagee protection, the Association may be dissolved by the affirmative assent in writing from 90% of the Lot Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms, and conditions set forth in Article V of this Declaration.

15.5. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.6. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.7. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.8. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, and the Board, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE TOWNHOME PROJECT.

15.9. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

15.10 **Repurchase Option for Construction Defect Claims.** In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Dwellings on the Lot ("Declarant") in connection with any alleged construction defects in such Owner's Dwelling, Declarant shall have the option, but not the obligation, to purchase such Dwelling on the following terms and conditions:

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

(i) The purchase price paid by the original Owner of the Dwelling & Lot when originally purchased from Declarant;

(ii) The agreed upon value of any improvements made to the Dwelling by anyone other than Declarant; and

(iii) The Owner's reasonable moving costs.

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

(c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Dwelling and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

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

15.11 **Condemnation.** Whenever all of any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

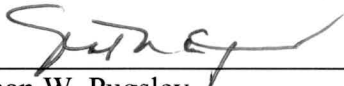
*[Certification on Next Page]*

**CERTIFICATION**

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized president and secretary.

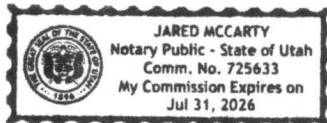
IN WITNESS WHEREOF, this amendment is hereby executed this 25 day  
of March in 202~~4~~  
2025

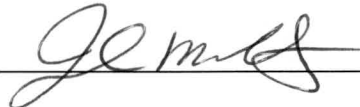
Trailside Twinhomes Midvale, LLC

By   
Nathan W. Pugsley  
Brighton Homes Utah II, LLC, Manager

State of Utah                    )  
  ss.  
County of DAVIS            )

On the 25 day of MARCH 2025, personally appeared before me Nathan W. Pugsley who by me being duly sworn, did say that he is the President of Brighton Homes Utah II, LLC, Manager of Trailside Twinhomes Midvale, LLC, and that the foregoing instrument is signed and executed by authority of the consent of its members.



Notary Public   
Residing in DAVIS COUNTY

My commission expires:  
JULY 31, 2026

## EXHIBIT A

### Legal Description of Property Owned by Trailside Twinhomes Midvale, LLC

#### BOUNDARY DESCRIPTION

A portion of the NE1/4, of the SW1/4 of Section 19, Township 2 South, Range 1 East, Salt Lake Base & Meridian, Midvale, Utah, more particularly described as follows:

Beginning at a point on the westerly line of 300 East Street and the NE Corner of VUNDER Subdivision according to the Official Plat thereof on file in the office of the Salt Lake County Recorder, located N0°12'55"E along the Section line 252.10 feet and West 24.75 feet from the Street Monument at the intersection of 300 East Street and 6790 South Street (Basis of Bearing: N0°12'55"E between the South 1/4 Corner of Section 19, T2S, R1E, SLB&M and the Street Monument at the intersection of 300 East Street & 6790 South Street); thence along a concrete wall the following 6 (six) courses and distances: (1) N89°45'30"W along the northerly line of said plat 146.00 feet; (2) thence S0°12'55"W along the westerly line of said plat 77.00 feet; (3) thence N89°45'30"W 200.00 feet to a plug in the top of the wall marking the NW Corner of PICKENS PLACE Subdivision according to the Official Plat thereof on file in the office of the Salt Lake County Recorder; (4) thence N0°12'55"E 123.59 feet; (5) thence N48°40'55"W 41.68 feet to the southeast corner of DIAMOND ACRES No. 1 Subdivision according to the Official Plat thereof on file in the office of the Salt Lake County Recorder; (6) thence N1°00'00"W along said plat 283.96 feet to the SW Corner of TWIN BRIDGES PUD according to the Official Plat thereof on file in the office of the Salt Lake County Recorder; thence S89°47'05"E along said plat 383.43 feet (plat: N89°47'25"W) to a broken plug in the sidewalk and to the westerly line of 300 East Street; thence S0°12'55"W along said westerly line 119.17 feet to a plug in the sidewalk marking the NE Corner of that Real Property described in Deed Book 10028 Page 9146 of the Official Records of Salt Lake County; thence along said Deed the following 2 (two) courses and distances: (1) N89°47'05"W (record: West) 125.25 feet to a plug in the curb; (2) thence S0°12'55"W (record: South) 46.00 feet to a rebar and cap marked "McNeil Engineering" and to a point on the northerly line of that Real Property described in Deed Book 11254 Page 5617 of the Official Records of Salt Lake County; thence along said Deed the following 3 (three) courses and distances: (1) N89°47'05"W (record: West) 15.00 feet to a rebar and cap marked "McNeil Engineering"; (2) thence S0°12'55"W (record: South) along a fence line and the extension thereof 73.00 feet to a rebar with no cap; (3) thence S89°47'05"E (record: East) in line with a fence line and the extension thereof 140.25 feet to a plug in the sidewalk and to the westerly line of 300 East Street; thence S0°12'55"W along said westerly line 119.88 feet to the point of beginning.

Contains: 3.06 +/- acres

