

Recorded at the Request of:  
Quarter Circle H Ranch Owners Association

Record against the Property  
described in Exhibit "A"

After Recording mail to:  
Jenkins Bagley Sperry, PLLC  
Attn: Bruce C. Jenkins  
285 W. Tabernacle, Ste. 301  
St. George, UT 84770

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0432

Amended CC & R'S PAGE 1 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**QUARTER CIRCLE H RANCH**  
**A SUBDIVISION IN ORDERVILLE, UTAH**

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**



## TABLE OF CONTENTS

RECITALS.....	1
SECTION I. DEFINITIONS.....	3
1. Accessory Dwelling Unit or ADU .....	3
2. Architectural Control Committee or ACC .....	3
3. Articles and By-Laws.....	3
4. Association.....	3
6. Common Areas.....	3
7. Custom Mountain Home .....	3
8. Declaration .....	3
9. Development .....	4
10. Director .....	4
11. Guest (of an Owner or Resident) .....	4
12. Insurer or Guarantor.....	4
13. Landscape Plan .....	4
14. Living Unit.....	4
15. Lot.....	4
16. Member.....	4
17. Mortgagee .....	4
18. Officer.....	4
19. Owner.....	4
21. Primary Designee.....	5
22. Project.....	5
23. Property.....	5
24. Resident .....	5
25. Supplementary Declaration.....	5
26. Tenant .....	5
27. Unit Estate.....	5
28. Yard Area.....	5
SECTION II. THE ASSOCIATION.....	6
1. General Purposes and Powers: .....	6
2. Membership: .....	6
3. Board of Directors:.....	6
4. Articles and By-Laws:.....	6
5. Annual Meeting:.....	6
6. Notification of Transfer:.....	6
7. Maintenance, Repair, and Replacement Obligations and Rights: .....	6
8. Labor and Services: .....	8
9. Association Functions: .....	8
10. Enforcement of Restrictions and Obligations .....	8
11. Right of Entry: .....	9
12. Implied Rights: .....	10
13. Limitation on Rights: .....	10
14. Rights within Areas: .....	10
15. Right to Encumber Common Area: .....	10
16. Right to Restrict Access:.....	11
SECTION III. RESERVED .....	12
SECTION IV. MEMBERSHIP AND VOTING RIGHTS.....	13
1. Membership: .....	13
2. Multiple Ownership Interests: .....	13
3. Voting Rights: .....	13

# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0434

Amended CC & R'S PAGE 3 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



4. Suspension of Voting Rights:	13
SECTION V. PROPERTY RIGHTS IN COMMON AREAS	14
1. Property Ownership:	14
2. Easement of Environment:	15
3. Damage to Common Areas:	15
4. Limitation on Easement:	15
5. Reserved:	15
SECTION VI. BUILDING AND CONSTRUCTION RESTRICTIONS	16
1. Building Restriction:	16
2. Additional Dwelling Unit:	16
3. Enclosed Garage:	16
4. Fireplaces and Chimneys:	16
5. Ground Disturbance:	17
6. Temporary Structures:	17
7. Signs:	17
8. Driveways and Parking:	18
9. Solar Collectors:	18
10. Propane Fuel Tanks (Storage):	18
11. Natural Gas:	18
12. Commencement of Construction and Construction Completion	19
SECTION VII. USE RESTRICTIONS	20
1. Care and Maintenance of Lot:	20
2. Nuisances:	20
3. Livestock, Poultry, and Pets:	20
4. Wildlife:	20
5. Garbage and Refuse Disposal:	20
6. Storage of Materials:	21
7. Vehicles:	21
8. Parking and Storage of Motorized and Recreational Vehicles:	21
9. Operation of Motorized Vehicles and Recreation Vehicles:	22
10. Commercial Activities Prohibited:	22
11. Tenants:	22
12. Burning:	23
13. Mining and Drilling:	23
14. Display of the Flag:	23
15. Accessory Dwelling Units	23
SECTION VIII. DESIGN CONTROLS	24
1. Architectural Control Committee:	24
3. Slope and Drainage Control	26
4. Soils Test	26
5. Site Work	26
6. Aesthetic Balance	26
9. Antennas:	27
10. Light:	28
11. Awnings:	28
12. Window Tinting:	28
13. External Equipment:	28
14. Water Pressure Valve:	28
15. Swimming Pools:	28
16. Spas:	28
17. Patios, Patio Covers, and Gazebos:	29

18.	Playground Equipment: .....	29
19.	Other Types of Play or Sport Equipment: .....	29
20.	Basketball Backboards: .....	29
21.	Security Bars: .....	29
22.	Landscaping: .....	29
23.	Retaining Walls: .....	29
24.	Yard Walls and Fences: .....	30
25.	Sight Distance at Intersections: .....	30
30.	Fines .....	31
33.	Re-subdivision of Lots .....	32
34.	Damages .....	32
SECTION IX. FINANCES AND OPERATIONS .....		33
1.	Creation of Lien and Personal Obligation of Assessment: .....	33
2.	Purpose of Assessments: .....	33
3.	Maximum Annual Assessment: .....	33
4.	Special Assessments for Capital Improvements: .....	34
5.	Uniform Rate of Assessment: .....	34
6.	Date of Commencement of Annual Assessments (Due Dates): .....	34
7.	Effect of Non-Payment of Assessment: .....	35
8.	Lien for Assessments and Other Amounts: .....	35
9.	Exercise of Power of Sale in Enforcement of Lien: .....	36
10.	Subordination of the Lien to Mortgages: .....	36
11.	Tax Collection from Lot Owners by Kane County Authorized: .....	36
12.	Books, Records, and Audit: .....	37
13.	Utilities: .....	37
14.	Insurance: .....	37
15.	Manager: .....	39
16.	Terms of Management Agreement: .....	39
17.	Reserve Analysis/Reserve Fund .....	39
18.	Budget: .....	40
SECTION X. GENERAL PROVISIONS .....		41
1.	Violation Constitutes Nuisance: .....	41
2.	Enforcement: .....	41
3.	Notice to Owners: .....	41
4.	Severability: .....	42
5.	Duration: .....	42
6.	Amendment: .....	42
7.	Conflict with Town Ordinances: .....	42
8.	Action of the Association: .....	42
9.	Rules Against Perpetuities: .....	42
10.	Fines: .....	42

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0435

Amended CC & R'S PAGE 4 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0436

Amended CC & R'S PAGE 5 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**QUARTER CIRCLE H RANCH  
A SUBDIVISION IN ORDEerville, UTAH  
SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions ("Declaration") was approved by the Association Members, pursuant to Article X, Sections 5 and 6(b) of the Amended and Restated Declaration (defined below), and amend and restate in its entirety and substitute for the following:

- Quarter Circle H Ranch, a Subdivision in Orderville, Utah, Amended and Restated Declaration of Covenants, Conditions, and Restrictions recorded with the Kane County Recorder's Office on February 6, 2015, as Entry No. 00165091 ("Amended and Restated Declaration"); and
- Any other amendments, supplements, or annexing documents to the covenants, conditions, and restrictions for Quarter Circle H Ranch, whether or not recorded with the Kane County Recorder.

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

**RECITALS**

WHEREAS, the Quarter Circle H. Ranch Owners Association, a Utah nonprofit corporation (hereinafter referred to as the "Association") has been created for the efficient preservation of the values and amenities of the Property, and manages that real property located in the Town of Orderville, Kane County, State of Utah, identified as QUARTER CIRCLE H RANCH, such property being more particularly described in Exhibit "A" hereto, which Exhibit is, by reference, incorporated herein as if set forth in full and is hereinafter referred to as the "Property."

WHEREAS, the Project is an area of natural beauty containing distinctive features of the Utah landscape, and the Association and elected Association Board desire to maintain on the Property a single-family residential community containing Custom Mountain Homes where the entirety of the Project's architecture and landscape work together in harmony. The Project's Custom Mountain Homes must evoke qualities of authenticity, proportionality, craftsmanship, sustainability, and social sophistication and will be completed with materials, to the extent

practicable, which are compatible with the ecology of the land, and which enhance its value to its Owners. This community has certain Common Areas for the benefit of the Development and the Owners of the Lots therein.

WHEREAS, the Association possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration.

NOW, THEREFORE, the Association hereby declares that all of the Property (and any additions thereto as hereinafter provided) shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property, and for maintenance of the Common Areas. These covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property and shall inure to the benefit of each such party.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0437

Amended CC & R'S PAGE 6 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0438

Amended CC & R'S PAGE 7 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## SECTION I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "Recitals"), the following terms shall have the meaning indicated. The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply.

1. **Architectural Control Committee or ACC** shall mean a committee established by the Board and which can be populated in part or full by members of the Board. The Board at its discretion, from time to time, appoint other individuals or consulting firms to fulfill the duties of the ACC. The ACC is to provide assistance in establishing and enforcing community standards in the realm of the Association's architectural scheme. The ACC, also, is to produce a set of standards for areas pertaining to the Project, which are not explicitly defined in these Covenants, Conditions, and Restrictions.

2. **Articles and By-Laws** shall mean and refer to the Articles of Incorporation and the By-Laws of the Association.

3. **Association** shall mean and refer to the Quarter Circle H. Ranch Owners Association, a Utah nonprofit corporation, and its successors and assigns.

4. **Board** shall mean and refer to the Board of Directors of the Quarter Circle H. Ranch Owners Association.

5. **Common Areas** shall mean and refer to that portion of the property, which is not included within the Lots, including all roads, improvements, and hiking trails, other than utility lines now or hereafter constructed or located thereon.

6. **Custom Mountain Home** shall mean a single-family residential home with an architectural style striving to embrace the natural beauty of the surrounding environment and using exterior finish materials designed to blend into and enhance the surrounding natural beauty. The Custom Mountain Home will integrate natural materials or engineered materials designed to carefully simulate natural materials on the exterior, which further enforces and honors the natural setting of Quarter Circle H Ranch. Custom Mountain Homes are recognized to use heavily textured material; rustic and natural earth tones; and the significant use of wood, stone, and non-reflective metals. Custom Mountain Homes use color schemes that blend into the surrounding landscape and view-shed, they include large open living areas, and can incorporate an extensive use of windows to afford panoramic views of the surrounding landscape. The Custom Mountain Home can vary from mountain contemporary to traditional mountain styling, and are typified by incorporating rustic details such as exposed logs or beams, large decks or porches, and stone exterior features such as chimneys.

7. **Declaration** shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0439

Amended CC & R'S PAGE 8 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



8. **Development** shall mean and refer to the Quarter Circle H Ranch, as it exists at any given time.
9. **Director** shall mean a member of the Board of Directors.
10. **Guest (of an Owner or Resident)** shall mean any employee, tenant, guest (whether or not for hire), or invitee of such Owner or Resident, including any transient guest.
11. **Insurer or Guarantor** shall mean a private or governmental mortgage insurer or guarantor, which has insured or guaranteed a First Mortgage.
12. **Landscape Plan** shall mean the overall landscape plan for the property as a natural landscape project and further detailed and administered by the ACC.
13. **Living Unit** shall mean and refer to a structure, which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned, which are used in conjunction with such residence.
14. **Lot** shall mean and refer to any of the separately numbered and individually described plots of land on the Plat.
15. **Member** shall mean and refer to every person who holds membership in the Association.
16. **Mortgagee** shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust.
17. **Officer** shall mean an officer of the Association.
18. **Owner** shall mean and refer to a trust, entity, or person(s) who is the Owner of record (in the office of the County Recorder of Kane County, Utah) of a fee simple or an undivided fee interest in a Lot. 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 or 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.
19. **Plat** shall mean and refer to the Phase I only portions of the Plat of the Quarter Circle H Ranch Homesites, prepared and certified by Brian Zitting, a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Kane County, Utah, concurrently herewith, also as the same may hereafter be modified, amended, supplemented or expanded in accordance with the provisions of this Declaration, concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.



# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0440

Amended CC & R'S PAGE 9 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



20. **Primary Designee** shall mean an individual person designated by Owner, when the Owner(s) consist of multiple persons, a trust, or an entity. The Primary Designee shall have all voting privileges as the designated person for the Owner.
21. **Project** shall mean that area of real property which is covered by the Phase I Plat, descriptions of which are stated in Exhibit "A" of this Declaration and such portions of land which may be annexed to the Development as provided for in Section X, Article 8 of this Declaration.
22. **Property** shall mean and refer to all of the real property, which is covered by the Plat, descriptions of which are stated in Exhibit "A" of this Declaration.
23. **Resident** shall mean any person who physically resides in a Living Unit, so long as said person is so residing.
24. **Secondary Structure** shall mean an area of the Lot that is used as a workshop, garage or guesthouse apart from the Living Unit. If the Secondary Structure is used as a guesthouse or living space it shall serve as the ADU, provided such is allowed by local ordinance.
25. **Supplementary Declaration** shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of this Declaration to all or any portion of lands as provided for in Section X, Article 8 of this Declaration and may contain such complementary or amended provisions for such additional land as are herein required by the Declaration.
26. **Tenant** shall mean any person or persons who occupy, inhabit, or use an Owners Living Unit on a temporary or permanent basis. Whether such person or persons pay rent or lease payments to the Owner is in-material in determining whether such person or persons constitute a Tenant status in the Property.
27. **Unit Estate** shall mean all of the components of ownership held by an Owner of a Living Unit or Lot, including any fee title interest, any undivided interest in Common Area, any right to use Common Area and any easement rights.
28. **Yard Area** shall mean and refer to the landscaped area adjacent to an Owner's Living Unit as governed by the "Rules and Regulations of the Architectural Control Committee.

ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0441

Amended CC & R'S PAGE 10 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## SECTION II. THE ASSOCIATION

1. **General Purposes and Powers:** The Quarter Circle H. Ranch Owners Association has been incorporated as the Association to which reference is made in this Declaration. Upon dissolution of the Association, the Assets of the Association shall be disposed of as set forth in the Association's Articles or By-Laws.

2. **Membership:** Each Owner, by virtue of being an Owner and only so long as a trust, entity, or person(s) is an Owner, shall be a Member of the Association.

3. **Board of Directors:** The affairs of the Association shall be managed by and (unless otherwise expressly provided herein or in the Articles or By-Laws) undertaken through actions of the Board, which may by resolution delegate any portion of its authority permitted by law to an ACC. The number and qualifications of Directors and their terms of office shall be as provided in the Articles and By-Laws.

4. **Articles and By-Laws:** The purpose and powers of the Association and rights and obligations of Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association, including any reasonable provisions with respect to corporate matters. However, in the event that any such provision may be at any time inconsistent with any provision of this Declaration, the provision of this Declaration shall govern.

5. **Annual Meeting:** An annual meeting shall be held at which meeting the annual budget shall be presented for approval and Association Board Members shall be elected. Such budget approval and election of Board Members shall be by a majority of votes cast in person, by proxy, or by ballot at the annual meeting. All Owners will be given not less than ten (10) nor more than thirty (30) days written notice of such annual meeting. The Members present in person, by proxy, or by ballot at such annual meeting shall constitute a quorum. Those members present or represented by proxy can continue to do business as a quorum until adjournment.

6. **Notification of Transfer:** Each Owner shall within ten (10) days of any sale, transfer, or conveyance of a fee interest in the Owner's Unit Estate, notify the Association of such sale, transfer, or conveyance. The Association shall assess a One Hundred Dollar (\$100) reinvestment fee to the successor Owner to change the Association records reflecting the new Owner of the Unit Estate. Such fee may be increased from time to time by the Board, as necessary, to reflect increased cost of administration.

7. **Maintenance, Repair, and Replacement Obligations and Rights:** Owners hereby covenant and agree, by accepting title to Unit Estates or any interests therein, whether or not it shall be expressed in any deed or other instrument conveying title, to keep Common Area, entry areas, other landscape areas and Project amenities in good, neat, clean, healthy, attractive, and (when applicable) operating condition and to replace Project amenities when necessary, appropriate, or advisable, all at their collective cost and expense, by having the Association so

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0442

Amended CC & R'S PAGE 11 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



repair, maintain, replace, and (when applicable) operate the same in conformance (when applicable) with the Landscape Plan.

Should any Lot Owner fail to timely complete development of a private landscape area as required by any applicable Lot Declaration, and should such Lot Owner either (i) fail to commence said development or (ii) fail to diligently pursue completion of said development within thirty (30) days following written demand therefor from the Board conforming with the requirements set forth in the last paragraph of this Article, the Board shall have the option (but not the obligation), upon the affirmative vote of at least two-thirds (2/3) of the Directors, of having the Association develop or complete development of the private landscape area as contemplated in the Lot Declaration at the cost and expense of the Lot Owner.

Should any Lot Owner fail to keep and maintain any Lot wall, lighting system, landscaping, landscape irrigation system, or other improvement which is located in any private landscape area in a good, neat, clean, healthy, attractive, and (when applicable) operating condition, in conformance with the Landscape Plan and the site plans, specifications, and materials approved by the Board pursuant to this Declaration, and in conformance with the Lot Owner's obligations under any applicable Lot Declaration, and should such failure continue for a period of ten (10) days following written demand from the Board conforming with the requirements set forth in the last paragraph of this Article and demanding that such failure be cured within said ten (10) days, the Board shall have the option (but not the obligation), upon the affirmative vote of at least two-thirds (2/3) of the Directors, of having the Association repair, maintain, and replace the same at the cost and expense of the Lot Owner.

Should any Lot Owner fail to supply such water and electric power as may be required to automatically irrigate landscaping located or to be located within, and operate lighting systems located or to be located within any private landscape area in conformance with its obligations under any applicable Lot Declaration, and should such failure continue for a period of ten (10) days following written demand from the Board conforming with the requirements set forth in the last paragraph of this Article and demanding that such failure be cured within said ten (10) days, the Board shall have the option (but not the obligation), upon the affirmative vote of at least two-thirds (2/3) of the Directors, of having the Association install, construct, place, and use conduit lines, wires, transformers, water lines, lighting systems, irrigation systems, meters, and other facilities and appurtenances in the private landscape area at the cost and expense of the Lot Owner in order to provide water and electric power to said private landscape area and to thereafter supply such water and electric power at the cost and expense of the Lot Owner as may be required to automatically irrigate such landscaping and operate such lighting systems.

Any written demand provided for in this Section shall be given in the manner set forth in this Declaration; shall specifically make reference to the Section of the applicable Lot Declaration requiring the demanded performance; and shall state that failure to timely perform within the applicable cure period (which shall also be specifically noted) shall result in the Association being empowered to cure such failure at the cost and expense of the Lot Owner.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0443

Amended CC & R'S PAGE 12 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 185.00 BY JENKINS BAGLEY PLLC



8. **Labor and Services:** The Board, on behalf of the Association, may obtain and pay for the services of a person or entity to manage Association affairs, or any part thereof, to the extent the Board deems advisable, as well as the services of such other personnel and entities, including independent contractors, as the Board shall determine to be necessary or desirable for the proper performance, by the Association, of its obligations and functions, whether such personnel are employed directly by the Association or by an independent contractor. The Association shall have no authority to enter into a professional management contract, which is inconsistent with the foregoing sentence or to directly or indirectly bind the Association to a contract inconsistent herewith.

9. **Association Functions:** The Association may undertake or contract for any lawful activity, function, or service for the benefit of the Owners. In addition to the assessments described herein, all costs and expenses of activities, functions, or services undertaken by the Association for the benefit of fewer than all of the Owners (including but which do not benefit every Unit Estate) may, at the discretion of the Board, be added to the assessments assessed to the Owners benefited thereby and their respective Unit Estates and shall be enforceable and collectible as assessments in accordance with the provisions of this Declaration. The Association shall obtain from applicable governmental authorities any permits and licenses necessary or appropriate to carry out its functions hereunder. The activities, functions, or services undertaken or contracted for by the Association may, but need not necessarily include, without limiting the foregoing, the providing of legal and accounting services necessary or desirable in connection with the operation of the Association or the enforcement of this Declaration; the providing of electric and water service to the Common Area, entry areas and other landscape areas; and the enforcement of all rights granted to the Association in any lease, easement, or other instrument, including this Declaration and any Lot Declaration.

The Board shall have the right to adopt, promulgate, impose, amend, and revise reasonable Association rules and restrictions for the use of Common Area and Project amenities.

Such rules and restrictions may, but need not necessarily, include the imposition of reasonable conditions for the use of Common Area and Project amenities and reasonable time restrictions for the use thereof.

10. **Enforcement of Restrictions and Obligations:** The Association, at the discretion of, and by action of the Board, shall have the right to enforce the obligations of any Owner or Resident under this Declaration or any provision of the Articles or By-Laws by assessing a reasonable fine, consistent with a Schedule of Fines, against such Owner or Resident, suspending the right of such Owner to vote on matters at Association meetings, in the case of, but only in the case of an Owner's failure to pay assessments or to abide by Association rules and restrictions for the use of Common Area and Project amenities by suspending the rights of the Owner or Resident (and any Guest or Tenant of such Owner or Resident) to use any Common Area or Project amenity; provided, however, that such voting and/or use suspension may not be imposed for a period longer than thirty (30) days per violation; but further provided that if any such violation continues for a period of ten (10) days after notice of such violation has been given to

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0444

Amended CC & R'S PAGE 13 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



such Owner or Resident, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties.

If any such fine imposed on an Owner or Resident by the Association is not paid by said Owner or Resident within thirty (30) days after written notice of the imposition of such fine, then the amount of such fine shall be added to the amount of the assessments charged to the Unit Estate of said Owner or Resident and shall be enforceable and collectible as an assessment in accordance with the provisions of Section IX of this Declaration.

No penalty may be imposed under this Section until the Owner or Resident cited for such violation has been afforded the right to be heard in person, by submission of a written statement, or through a representative at a meeting of the Board. Should the Board believe grounds may exist for any such penalty or suspension, the Board shall give the Owner or Resident believed to be in violation at least fifteen (15) days prior written notice of the intended penalty or suspension and the reasons therefor of such intended penalty or suspension. The Owner or Resident shall be given an opportunity to be heard before the Board either orally or in writing, no fewer than thirty (30) days before the effective dates of the penalty or suspension. No suspension of the use of any Common Area or Project amenity shall affect the rights of any Owner or Resident to access the Owner's or Resident's Lot. If fines are to be assessed, the Association shall follow the procedures set forth in Section 57-8a-208 of the Act.

The Association and any Owner may also take judicial action against any Owner or Resident to enforce or enjoin compliance with this Declaration, to enjoin non-compliance with this Declaration, or to obtain damages for non-compliance, all to the extent permitted at law or in equity. Should any Resident violate any provision of this Declaration, such violation shall also be considered and treated as a violation by the Owner of the Unit in which the Resident resides. Likewise, should any Guest or Tenant of any Owner or Resident violate any provision of this Declaration, such violation shall also be considered and treated as a violation of the Owner or Resident of the Lot in which the Resident, Guest, or Tenant resides. Furthermore, pursuant to Utah Code Section 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the Tenant.

11. **Right of Entry:** Subject to the provisions of this Declaration, the Association, its employees, agents, and contractors shall have the right, after hand delivering written notice to any Resident thereon not less than twenty-four (24) hours in advance, or after mailing notice not less than seventy-two (72) hours in advance, to enter upon any Lot for the purpose of enforcing any provision of this Declaration and/or performing any work which the Association is obligated, permitted, or authorized to perform pursuant to the terms of this Declaration; provided, however, that no such notice need be given for entry upon a Lot to perform any of the functions which the Association is obligated to perform pursuant to the provisions of Section II, Article 7. In addition, the Association, its employees, and contractors shall have such rights of entry upon Lots as may be granted, given, and permitted under any Lot Declaration of record with respect to said Lot, upon such notice and for such purposes as may be set forth in Section II, Article 7 and

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0445

Amended CC & R'S PAGE 14 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



in the applicable Lot Declaration.

12. **Implied Rights:** The Association, by action of the Board, shall have and may exercise any right or privilege given to it expressly by this Declaration, or any Lot Declaration, or reasonably to be implied from the provisions of this Declaration or any Lot Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights, or privileges.

13. **Limitation on Rights:** The Association shall not take any of the following actions except with the prior affirmative votes equal to at least fifty-one percent (51%) of the total voting power of the Members of the Association:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public utility company if the rates charged for the materials or services are regulated by the Utah Public Service Commission or any successor regulating agency (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), (ii) contracts for casualty and/or liability insurance policies which do not exceed three (3) years duration.

(b) Paying compensation to Directors or Officers for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

14. **Rights within Areas:** The Board shall have the right to grant permits and licenses as respects Association easements in private landscape areas and entry areas for purposes relating to the performance of Association obligations and permitted actions set forth in Article II, Section 7 and for purposes benefiting the Property. In addition, the Board shall have the right to grant permits, licenses, and easements in Common Area for utilities, roads, and other purposes benefiting the Property and/or the Owners and for driveways, hiking trails, and walkways for the benefit of Lots adjoining Common Area. In addition, the Board shall have the right to dedicate, convey, or otherwise transfer fee title to all or portions of the Common Area to any public agency, authority, or utility so long as the instrument of dedication, conveyance, or transfer is approved by affirmative vote of sixty-seven percent (67%) of all votes and the local government authority, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose; provided, however, that an instrument of dedication, conveyance, or transfer given in lieu of threatened condemnation may be executed by Officers duly authorized by the Board.

15. **Right to Encumber Common Area:** The Association shall have the right, subject to such procedures and restrictions as may be set forth in its Articles and By-Laws, to borrow money for the purpose of improving Common Area and repairing, replacing, and supplementing any Project amenities. Further the Association shall have the right to secure the repayment of any such borrowed money by encumbering the Common Area, any Project

amenities located thereon, and/or any personal property owned by the Association so long as, but only so long as, such encumbrance has been approved by Owners casting affirmative votes equal to at least fifty-one percent (51%) of all the voting power.

16. **Right to Restrict Access:** The Board shall have the right to restrict access to and use of Common Area and any Project amenities or personal property located thereon for purposes of performing any obligation or authorized act of the Association set forth in this Declaration or for purposes of exercising any right of the Association set forth in this Declaration. Any such restrictions shall be reasonable in scope and duration. No such restrictions shall restrict the rights of an Owner or Resident to ingress to, and egress from, their Lot.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0446

Amended CC & R'S PAGE 15 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**SECTION III. RESERVED**

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0447

Amended CC & R'S PAGE 16 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC





#### SECTION IV. MEMBERSHIP AND VOTING RIGHTS

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 pertains.

2. **Multiple Ownership Interests:** In the event there is more than one (1) Owner of a particular Lot or the Owner of a Lot is a trust or an entity, the vote relating to such Lot shall be exercised by the Primary Designee. A vote cast at any Association meeting by the Primary Designee, whether in person, by proxy, or by ballot shall be conclusively presumed to be the vote attributable to the Lot concerned.

3. **Voting Rights:** Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one (1) vote exist with respect to any Lot.

4. **Suspension of Voting Rights:** The Board may suspend, after notice and opportunity for hearing, the voting rights of Members relative to matters which are the subject of this Declaration including any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0448

Amended CC & R'S PAGE 17 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 188.00 BY JENKINS BAGLEY PLLC



ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0449

Amended CC & R'S PAGE 18 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## SECTION V. PROPERTY RIGHTS IN COMMON AREAS

1. **Property Ownership:** The property is divided into two classifications of ownership:

(a) **Private:** The Lot areas as defined on the subdivision plat.

(b) **Common:** All lands as shown on Exhibit A, attached hereto designated as The Common Areas, less and excepting the numbered Lots, are lands owned by the Association and are dedicated as common space for the enjoyment of all Owners and, as such, shall be maintained as natural landscape or roadways as contemplated. The Common Areas are not subject to partition on petition but are owned by the Association.

An easement is hereby granted to the Town of Orderville, Utah, and any other governmental entity or quasi government body having jurisdiction over the Property to access and to have the right of ingress and egress over and across open spaces and Common Areas within the Property for purposes of providing police, fire protection, ambulance, and other similar services.

Easements for installation and maintenance of utilities and drainage facilities are shown on the Plat. Structures of any type are prohibited within these easements. Plants or other materials may be placed or permitted within such easements which will not damage utilities, only so long as they do not inhibit flow of water through drainage channels in the easements. The Owner of the Lot, except for those improvements for which a public authority, utility, or the Association is responsible, shall maintain the easement area of each Lot and all improvements in it continuously.

Easements for walking/hiking trails are reserved as shown on the recorded plat. Structures of any type are prohibited within these easements. Plants or other materials may not be placed or permitted to remain within such easements whereby such plants or other materials would restrict or obstruct the normal use of such designated walking/hiking trails. The Association shall be responsible to maintain the easement area for all walking/hiking trails.

Established roads within the Property are private and for the exclusive use of Members and their invited guests subject to any easements recognized by law.

A driveway from a Lot or Lots (in the case of a common driveway between the Lots of two (2) Lot Owners) that connects with a common street is for the exclusive use of the Owner(s) of the Lot(s) and is not considered a common roadway of the Subdivision. Common roadways within the subdivision are private and not public but may, at a future date, be dedicated by the Association to an appropriate public entity, provided all liability for maintenance of the same is accepted by such entity.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0450

Amended CC & R'S PAGE 19 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



2. **Easement of Environment:** Each Member shall have a right and easement of use and enjoyment, including, but not limited to, the right of ingress and egress to and from his Lot, and 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 grant the use and enjoyment described herein to any resident, guest, tenant, lessee, or contract purchaser who resides on such Member's Lot.

3. **Damage to Common Areas:** To avoid damage to underground utilities, Owners must have consent of the ACC and local utility companies before digging or driving rods or stakes into the ground in Common Areas. Owner shall bear the cost of repairs to any underground utilities damaged by Owner or any representative or agent of the Owner.

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

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) 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;

(c) The right of the Town of Orderville, the County of Kane, the State of Utah, 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 spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas 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 fifty-one percent (51%) of all the votes which Members present in person, by proxy, or by ballot are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. **Reserved:**

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0451

Amended CC & R'S PAGE 20 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 188.00 BY JENKINS BAGLEY PLLC



## **SECTION VI. BUILDING AND CONSTRUCTION RESTRICTIONS**

1. **Building Restriction:** No property shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any property other than one (1) detached single-family dwelling ("Living Unit") not to exceed the height indicated on the subdivision plat pertaining thereto, and one (1) Secondary Structure. All buildings shall conform to Section VIII Design Controls and comply with the Rules and Regulations of the ACC. Substantially similar Living Units on adjacent Lots will not be allowed.

2. **Secondary Structure:** A structure allowed on the Lot in addition to the Living Unit ("accessory building") which may be used as a shop, garage, guest house, or additional storage area. If the Secondary Structure is used as a living space, it shall serve as the ADU (Section VII.15). The total square footage of the accessory building shall not exceed fifty percent (50%) of the livable square footage of the Living Unit in accumulative outside square foot measurement of all floors (commonly referred to as the "square footage" of a structure), exclusive of porches, patios, and decks (e.g. if the livable square footage of the Living Unit is 2,800, then the Secondary Structure may be up to 1,400 square feet). Placement of the Secondary Structure must seek to minimize disruption to natural vegetation and should be placed such as to minimize impact to neighboring Lot views. All buildings must be constructed in the same architectural style and/or finished in the same materials as is consistent with the property's Living Unit.

3. **Enclosed Garage:** Every Living Unit shall have at a minimum a fully enclosed garage sufficient in total enclosed size such as to accommodate two (2) full-size passenger vehicles or light duty trucks. If the garage is detached from the Living Unit it shall constitute the Secondary Structure. If the required enclosed garage is included in an Secondary Structure, then its square footage shall be excluded from the calculation of the Secondary Structure square footage for up to six hundred (600) square feet accepting that under no circumstances shall this accommodation afford the construction of more than one (1) Secondary Structure on a Lot.

4. **Fireplaces and Chimneys:** All fireplaces and chimneys shall be installed in accordance with the manufacturer's specifications. Natural rock or cultured stone shall be used for the exterior construction of fireplaces and chimneys. Open fireplaces should be equipped with spark screens and all chimneys must be equipped with approved spark arrestors. Due to the extreme fire danger present in this high desert and mountain region, and to preserve the high quality of the mountain air in the area, all Owners are encouraged to utilize natural gas or propane fireplaces, in place of wood burning fireplaces and/or stoves. If selected, wood-burning fireplaces (including outdoor units) must be equipped with a U.L. or an I.C.B.O. approved spark arrestor with non-combustible bottom. All metal spark arrestors must be completely concealed from view and buffered by a sufficient chimney cap screening (i.e. black mesh, etc.) and detail. Exposed metal flue pipes will not be approved. Natural rock or cultured stone shall be used for the exterior construction of fireplaces and chimneys.

# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0452

Amended CC & R'S PAGE 21 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



Open outdoor fire pits are allowed within the Subdivision. Owners are encouraged to use natural gas or propane fuel sources if possible. The fire pit must be contained within the Yard Area of the home and be free and clear of trees and other vegetation within twenty (20) feet of the pit. A water source must be available within the twenty (20) -foot radius. Outdoor fires must always be attended and fully extinguished before leaving the area. Fire pits or fires of any kind are not allowed on Lots that do not have a completed Living Unit with appropriate emergency water source.

Portable barbecues will only be permitted if they have lidded cookers. Any and all permanently installed barbecues must be pre-approved by the ACC.

5. **Ground Disturbance:** All structures must be located within the Owner's Lot as described on the subdivision plat. The Owner, for landscaping purposes, may use the area within the Owner's Lot extending from the foundation of the Owner's home for up to thirty (30) feet in each direction, and referred to hereinafter as the Yard Area, and, in no event, may the landscape extend into the set-backs as defined by the Town of Orderville. Yard walls may also be placed in the Yard Area but said yard walls must meet all requirements and restrictions of this Declaration. Indigenous foliage may be planted on any part or portion of the Owners Lot. All utility lines from the street to the home shall be placed underground and located within the borders of the driveway or driveway right-of-way. Other than the foregoing and construction of a driveway, no disturbance of natural landscape or vegetation shall be permitted.

6. **Temporary Structures:** No structure of a temporary character, whether it be a trailer, mobile home, recreation vehicle, camper, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a permanent Living Unit; except that during construction of a Living Unit a recreation vehicle or camper may be occupied by the Lot Owner or those assisting the Lot Owner with the construction of the Living Unit. Under no circumstance can the temporary structure be occupied on the Lot for a period longer than twelve (12) months measured from the time construction of the Living Unit has commenced. Temporary structures are not permitted on Common Areas unless under the direction of the Board.

7. **Signs:** No attached or detached signs or displays identifying an Owner or a parcel shall be permitted unless the design and color has been submitted to and approved by the ACC, in writing, so as to assume a dignified and basically uniform appearance of all signs permitted within the Project. Address signage is standardized for each home within the Association. The fabrication and installation of these signs must be coordinated with the ACC prior to installation. The cost of such signs will be borne exclusively by the Owner. No additional signage of any kind will be permitted except signs required by legal proceedings or for the marketing of a property for its sale. Temporary construction signs used by each builder as specified and approved by the ACC, and such directional signs, street, or road signs as may be provided by the Association.

# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0453

Amended CC & R'S PAGE 22 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



8. **Driveways and Parking:** All driveways, walkways, parking areas, and other areas of similar nature shall be of such materials and in such colors as are approved by the ACC. They must be built in accordance with the approved plans and specifications and completed within ninety (90) days of completion of buildings or improvements erected upon the subject Lot.

All residences shall have a single hard surfaced or compacted road base surface driveway not exceeding sixteen (16) feet in width and not less than twelve (12) feet in width at its intersection with the common street and within the setback area which connects the residence to the common street and allowing safe ingress and egress. Owners of adjoining Lots may propose a shared driveway. The driveway intersection with the Common Area streets must accommodate drainage flows in the same manner as provided for prior to driveway construction.

Guest parking space for at least two (2) vehicles shall be included in the design of the Living Unit and driveway. Driveways and guest parking shall be designed and installed so as to minimize the scarring of the terrain and removal of trees, vegetation, boulders, and other natural beauty.

Driveways and parking entirely within the setback area may be sized to accommodate full access to the garage area opening. Any driveway or parking within the setback area exceeding sixteen (16) feet wide must be approved by the ACC.

No parking shall be allowed on the Subdivision streets (Common Areas) shown on the Plat, except for special events, which shall be subject to approval, in writing, by the Board.

9. **Solar Collectors:** Solar collector systems or solar collector devices can be erected, constructed, placed, or permitted to remain on the exterior of any Living Units or structures on the Lots in said Development, if shielded from the view of others and approved by the ACC. All solar collector systems and solar collector devices within the Development shall be subject to approval by the ACC, as to location and aesthetics. Ground-mounted solar collector systems cannot be visible from any street view.

10. **Propane Fuel Tanks (Storage):** All propane fuel storage tanks or propane fuel storage devices shall be placed and buried underground, on the Owner's Lot, with all appurtenances to such storage tank or storage device shielded from view of other Lots. The placement of said tanks or devices shall require prior approval by the ACC as to location and aesthetics.

11. **Natural Gas:** Should natural gas become available as a public utility for the Subdivision, and the Association adopts the natural gas public utility service as the mode of gas service for the Association, then all Owners shall be required to pay their proportionate share of the Association's expense of providing appropriate natural gas utility lines for the Development.

12. Commencement of Construction and Construction Completion: Lots purchased can be held at the Owner's discretion indefinitely before commencement of construction of the Living Unit or Secondary Structure. Once a building permit is issued and the Board or ACC has issued design approval and once any groundbreaking activity has begun, the Owner will need to complete all exterior elements of the Living Unit -- and if approved for construction concurrently the Secondary Structure -- within twelve (12) months. Completion of exterior elements shall ensure the structure has met all necessary inspections and safety standards. Completion of exterior elements shall include removal of all exterior construction waste, temporary structures, establishment of the driveway entrance, garage, and off-street parking. For the avoidance of doubt, within twelve (12) months from any groundbreaking activity, the Living Unit and Secondary Structure, if included, will appear complete from all exterior view angles. Rehabilitation of native vegetation outside the Yard Area and/or within the setback area must be complete within twelve (12) months of construction commencement. If these requirements are not met, the Association may assess fines consistent with a Schedule of Fine until completion of all exterior elements and vegetation rehabilitation, as necessary.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0454

Amended CC & R'S PAGE 23 / 48  
VERJEAN CARUSO, KANE COUNTY RECORDER  
FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0455

Amended CC & R'S PAGE 24 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 188.00 BY JENKINS BAGLEY PLLC



## **SECTION VII. USE RESTRICTIONS**

1. **Care and Maintenance of Lot:** The Owner of each Lot shall keep the Yard Area same free from rubbish, unsightly objects, such as but not limited to dilapidated recreational vehicles and vessels, appliances, indoor furnishings, signage, boxes, non-operating or unlicensed vehicles, litter, and noxious weeds. All structures, landscaping, and improvements shall be maintained in good condition and repair at all times. In order to mitigate fire hazards the Owner of each Lot shall keep natural vegetation or other landscape vegetation such as brush, leaves, needles, pinecones, and tree branches adequately maintained and cleaned away from the Living Unit. If it is determined that a Lot and/or associated structures are a fire hazards or otherwise detract from the beauty of the area and it is not remedied by the Owner within thirty (30) days, a licensed contractor will be hired on the Owner's behalf to remedy the issue. All costs and any associated service fees will be due upon receipt and constitute an assessment to be collected through the Association collection process under Section IX.

2. **Nuisances:** No noxious or offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot shall be used for any illegal purposes.

3. **Livestock, Poultry, and Pets:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets, not more than two (2) in number, may be kept provided that they are not kept, bred, or maintained for any commercial purpose and are restricted to the Owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise that, in the opinion of the Board, constitutes a nuisance. No pets of any vicious nature shall be allowed within the Property. The Board shall have full authority to determine whether a dog or other pet is vicious in nature.

4. **Wildlife:** Wildlife species are encouraged to range throughout the Property. No person shall use traps, poisons, or other methods of killing the natural inhabitants. The natural inhabitants shall not be harassed, injured, or molested in any way, except the removal, trapping, or killing of the natural inhabitants shall be permitted and carried out solely under the direction of the ACC when the populace of the natural inhabitants, as determined solely by the ACC, have become overpopulated for the Property, have become a nuisance in the Property, or have become a health hazard to the Owners or it's contiguous neighbors. No recreational feeding of big game animals or other native wildlife shall be permitted, with exception of birds.

5. **Garbage and Refuse Disposal:** No Lot shall be used or maintained as a dumping or holding ground for rubbish. Trash, garbage, or other waste shall not be kept, except in sanitary containers and secured inside the Living Unit or Secondary Structure. The Association shall specifically designate any area, which is to be allocated as garbage or refuse disposal area and any such area shall be in an appropriate location and away from any Lot. Clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots or maintained in the patio areas or in the Living Unit. No unsightly materials or other objects are to be stored on any Lot in view of the general



# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0456

Amended CC & R'S PAGE 25 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



public or neighboring Lot owners. Any violation will be documented and addressed with the Owner and any unresolved issue(s) within thirty (30) days of written notice will be assigned to a maintenance company and the charges and associated service fees will be added to the assessment of the to the Owner and collected as provided in Article IX.

6. **Storage of Materials:** During construction and for a period of sixty (60) days after completion, a Lot may be used for the storage of materials used in the construction of the building or improvement. The total storage period, including pre-construction period, construction period, and post construction period shall not exceed fourteen (14) months unless specifically approved by the ACC.

7. **Vehicles:** Motor vehicles that are inoperable or currently without proper licensing, shall not be permitted to accumulate upon any Lot, street, driveway, walkway, or road area adjacent thereto. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired, or repainted on or in front of any Lot unless performed within a completely enclosed garage or Secondary Structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots. No commercial vehicles shall be parked or stored on any Lot overnight or on a continual basis. The designation as a commercial vehicle shall be further defined by the rules and regulations of the Board. The Board shall have the authority to grant temporary parking of such a designated commercial vehicle on a Lot under special circumstances and as determined by the Board. The foregoing restriction shall not be deemed to prevent temporary parking of commercial vehicles being used by repair or construction firms for the current repair or construction of facilities or buildings of an Owner, but such temporary parking shall be limited to the normal amount of time required to complete such repair or construction.

8. **Parking and Storage of Motorized and Recreational Vehicles:** Boats, trailers, buses, motor homes, campers, recreational vehicles, vans, trailers, or other such vehicles, shall not be parked or stored upon any Common Area, street, private drive, or Lot, except within an enclosed garage on the Owners Lot. (Refer to Section VI, 6 "Temporary Structures" for additional clarification). The foregoing restriction shall not be deemed to prevent temporary parking for loading and unloading of such vehicles, but such temporary parking shall not exceed a twenty-four (24) -hour period of time and not more than one (1) twenty-four (24) -hour time period shall be permitted in any three (3) contiguous calendar days for Lots containing a Living Unit. All motorized vehicles shall be properly licensed when used on any common access streets.

Notwithstanding the limitations in Section 6.6, Owners may park or temporarily use a recreational vehicle or camper on the Property. All such vehicles must be parked within the Yard Area and outside any setbacks defined by the Town of Orderville. The recreational vehicle or camper shall be placed in a way such that is not visible from an adjoining Lot or across a viewshed. No such vehicles shall impede the open space views of another Lot or Common Area. Parking of a recreational vehicle or camper inside a garage shall not be limited in any way.

ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0457

Amended CC & R'S PAGE 26 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



9. **Operation of Motorized Vehicles and Recreation Vehicles:** All snowmobiles, motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established and designated trails, streets, driveways, and parking areas and are specifically prohibited from all other portions of the Property. Such vehicles may be used on said streets, driveways, and parking areas only for ingress and egress purposes. Such vehicles shall not be used for recreational purposes anywhere within the Project, except as permitted by Rule of the Association.

10. **Commercial Activities Prohibited:** Lots shall not be used for, or in connection with, the conduct of any trade, business, professional, or commercial activity of any kind, except "home occupations" as may be permitted by Orderville Town Ordinances and approved by the Board. The following Commercial Activity shall be excluded under this Subsection 10:

Owners shall be permitted to use their Living Unit(s) as a short-term rental or long-term lease property. Any such rental or lease that exists on a residence of more than thirty (30) days to the same renter or lessee shall be reported as a permanent or long-term renter or lessee and must be registered with the Association as a Tenant. The Owner of any rented or leased residence shall be subject to applicable Town of Orderville ordinances. No more than two (2) rental contracts (leases) for a maximum of two (2) families are permitted at any given time on a Lot.

11. **Tenants:** No Owner shall permit *unruly tenants* to reside on any Lot. "Unruly tenants" shall be defined to include those who do not abide this Declaration and/or the Association Rules, who are disruptive and/or noisy, and/or who intentionally or recklessly cause damage to any property within the Project. Owners shall ensure that their tenants are made aware of and agree to comply with the terms of this Declaration and the rules. The Board shall have full power and authority to determine conduct is in violation of this covenant.

The Board shall have the right to require Owners to evict unruly tenants, and/or take other appropriate legal action to ensure their compliance with this Declaration and the rules of the Association. If an Owner does not take, or commence to take, such action within fifteen (15) days from receipt of written notification from the Board, the Board will have the power to levy a "Limited Assessment" to be assessed on date of the first written notice against the Owner, not to exceed One Thousand Dollars (\$1,000.00) every tenth (10<sup>th</sup>) day for each non-compliance, and commence to take appropriate legal action. Any such unpaid assessment will constitute a lien against the Owner's Lot, as provided for herein. Proceeds from the assessment will be applied to the Association treasury and be used as determined appropriate by the Association's Board. The Board shall have full power and authority to determine whether a violation of this Declaration has occurred.

The Board shall have the discretion to exercise this authority. The Board shall make such determination only after prior notice to the person or persons alleged to be in violation, and a timetable to make correction of violation, which notice shall be given in accordance with the rules of the Association. Review or appeal may be requested by submitting a letter of request for appeal to the President of the Association. The Association must reply to the request for appeal

in writing within thirty (30) days. Such response may grant the relief requested in the appeal, deny the relief requested in the appeal, or approve a compromise.

12. **Burning**: No Lot Owner or Lot Owner's guest, tenant, vendor, contractor, or sub-contractor shall be permitted to burn any material within the subdivision, whether it be in the open or in a burn barrel. The burning of weeds, even in a controlled burn is strictly prohibited. This restriction does not include the use of barbecue grills or a contained fire pit for usual and customary food cooking on a Homeowner's Lot (*see* Section VI, Article 6).

13. **Mining and Drilling**: Except as provided below, no portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. No water well shall be drilled on an Owner's Lot.

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

15. **Accessory Dwelling Units**: For an ("ADU") approved by the local governmental authority pursuant to Utah Code Sections 10-9a-530 and 17-27a-526, the Owner shall provide to the Association, upon request and as a condition to maintain an ADU within the existing footprint of the Owner's Living Unit, the following information:

- (a) Copies of ADU permits from the local governmental authority;
- (b) Proof of additional parking required by the local governmental authority;
- (c) Copies of business licenses for operating an ADU;
- (d) Copies of liens, if any, held on an ADU by the local governmental authority; and
- (e) Verification of the minimum lot size required for an ADU, if any, by ordinance of the local governmental authority.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0458

Amended CC & R'S PAGE 27 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0459

Amended CC & R'S PAGE 28 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## **SECTION VIII. DESIGN CONTROLS**

For the Association to achieve an authentic character that is reflective of the Quarter Circle H Ranch setting, the entirety of the Custom Mountain Home architecture and its landscape must work together in harmony with the Lot, native vegetation, and views. Many interpretations of this character are both anticipated and encouraged at each Lot and in each building structure. This architectural character and sophistication ("aesthetic balance") are expected in every design and should consistently demonstrate respect for the natural environment, wildlife, and the historic ranch environment so distinct to the character and vision of this Project. Specifically, the architecture in the Project's Custom Mountain Homes must evoke qualities of authenticity, proportionality, craftsmanship, sustainability, and social sophistication.

The Design Controls serve to ensure execution of the Project's design philosophy and are intended to guide Owner's in implementing designs for the Custom Mountain Home. The Design Controls are used to support clarity in developing Custom Mountain Homes considered within the Project. The Design Controls are not purported to encourage look-alike standardization of Living Units or ADUs; but instead, the Design Controls are the backbone of a harmonious architectural approach that will consistently integrate every structure into the Project design philosophy.

Before any Living Unit design is proposed, the Owner should conduct a thorough Lot and Project area evaluation, through which they should gain a complete understanding of the Lot's topography, sun angles, view corridors, and relationships with ridgelines and native landscape features. After this complete evaluation has been conducted an Owner and the architect can more effectively determine natural restraints and/or particularities that must be honored in the Custom Mountain Home design. Preserving and enhancing the unique mountain landscape and ensuring enduring value for the Project is the primary concern of the Association.

1. **Architectural Control Committee:** All improvements on a Lot, whether a building, patio, spa, deck, landscape, or hardscape, must be approved by the ACC.

(a) **Establishment of the Architectural Control Committee:**

The ACC shall be made up of no less than three (3) members who shall serve a term of one (1) year. The ACC membership shall include (i) one (1) member of the Board who is not serving as the Board president, (ii) one (1) member appointed by the Board president from among the Association who is not already on the Board, and (iii) one (1) member appointed by the Board representative named in Section VIII.1.i to the ACC. Association members appointed to the ACC shall have experience in real estate, construction, design, architecture, or adjacent field such as to provide diversity of input and guidance to the ACC activities. The Board shall act as the ACC at any time that there is not an appointed ACC.

(b) **Rules of the Architectural Control Committee:** No member of the ACC shall receive any compensation or make any charge for services rendered. The ACC shall adopt

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0460

Amended CC & R'S PAGE 29 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The ACC shall, by majority vote, elect one (1) of its members as chairman and one (1) of its members as secretary and the duties of each will be such as usually appertain to such offices. The ACC shall meet on a regular basis as determined by the ACC. The ACC shall have power, by majority vote, to promulgate rules and regulations to guide it in its activities. The rules and regulations, subject to amendment by the ACC. By majority vote of the Owners, by one (1) vote for each Lot, any rule or regulation of the ACC may be amended, adopted, or repealed by such voting process set forth herein. And in Utah Code Section 57-8a-217.

The ACC shall make available record of design reviews, lists of materials approved and disapproved for exterior finishes, colors for use on exterior materials, and any material and its implementation approved for use on a Custom Mountain Home or Lot improvement. Such lists may change from time to time based on the continued evaluations, changes in implementation, and other considerations intended to support the Project's objectives.

2. **Submitting Items for Approval:** Three (3) complete sets of building plans and specifications shall be filed with the ACC, together with a site or plot plan showing grading, landscaping, and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the ACC may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary. In lieu of print copies of the building plans, digital formats may be accepted by the ACC for review and consideration so long as they are generally accessible and comprehensive in content. Three (3) print copies are required to document final approval. No work shall commence unless and until the ACC shall endorse on all sets of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC pursuant hereto. The three (3) complete sets of building plans and specifications shall be retained and distributed as follows:

(a) One (1) set of building plans and specifications shall be retained as a permanent record by the ACC.

(b) One (1) set of building plans and specifications shall be provided to the governing municipal entity that provides the building permit for said building plans and site. This set of building plans and specifications shall first have the signed approval of the ACC stamped on said set of plans and specifications prior to submittal to the governing municipal entity which provides the building permit for said building plans and site.

(c) One set of building plans and specifications shall be returned to the Owner or the Owner's representative for construction purposes.

(d) Any building plans and specifications submitted to the ACC shall be approved or disapproved by the ACC, in writing, within thirty (30) days after submission. In the event the

# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0461

Amended CC & R'S PAGE 30 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



ACC fails to take any action within such period it shall be deemed to have approved the material submitted.

3. **Slope and Drainage Control:** No structure, excavation, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

4. **Soils Test:** The ACC may require that the Lot Owner obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction and such soils test and recommendation shall be submitted to the ACC for approval. Furthermore, the ACC may condition final approval following the recommendations set forth in the soils report. However, neither the ACC nor the Association shall be liable for any failure to follow the recommendations or flaws in the recommendations.

5. **Site Work:** No excessive excavation or fill will be permitted. Where soil is exposed, it shall be re-contoured as needed and appropriately landscaped. All exposed openings shall be backfilled and the skirt ground shall be graded and the site appropriately landscaped. No wholesale removal of vegetation will be allowed; rather the selective removal necessary for construction will be permitted. Every effort must be taken to avoid disturbing the earth or trees. Specific rock outcrops and trees creating distinct character on a Lot shall not be modified or removed without approval by the ACC. Owners are encouraged to work existing rocks and trees into the design on the constructed environment. Site grading and drainage must occur with minimum disruption, without altering natural drainage patterns and without causing conditions that could lead to unnecessary soil erosion. Cut slopes required for any driveway may not be left as exposed earth unless approved as such by the ACC. Any required retaining walls must be constructed or surfaced with stone/rock and such construction and materials for such retaining walls shall require prior approval by the ACC.

6. **Aesthetic Balance:** In implementing the design controls Owners shall implement an architectural design that enhances the surrounding natural beauty of the Project. In doing so the Custom Mountain Home will use exterior finish materials described in this Section implemented across a fully integrated architectural approach wherein each elevation of the house presents appropriate visual mass, well proportioned visual breaks creating interest and harmony with the natural setting of home within the Lot. Aesthetic balance is not intended to create architectural uniformity and therefore cannot be in-and-of itself prescriptive; however, the ACC will carefully review proposed designs to ensure the Living Unit and Secondary Structure achieve and aesthetic balance consistent with the values of the Community.

7. **Log and Timber Custom Mountain Homes:** All structures shall be primarily constructed from natural log, natural timber, and/or rock material. Engineered alternatives for

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0462

Amended CC & R'S PAGE 31 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



these natural materials may be approved by the ACC. Accent materials complementing the primary materials are expected and shall be reviewed by the ACC.

(a) Natural log and natural timber can be used in either the scribe (i.e. stacked log) or post and beam design approach. Logs used for the structure of the Living Unit and ADU construction shall be no less than eight (8) inches in diameter and timbers shall have an exposed dimension of no less than eight (8) inches. Half-log may also be used as exterior finishing material so long as the exposed profile reflects no less than that of an eight (8) inch round log. Half-timber (e.g. shiplap or board and batten) may be used in the exterior finish of the Custom Mountain Home so long as: (i) the specific application respects the proportions of the natural log or timber, (ii) this finish approach is not used across the entire surface of any one elevation, and (iii) the material used is applied as individual timber planks. No sheet materials will be allowed, whether crafted of wood or engineered alternative.

(b) Rock material: shall include both natural rock and cultured stone in shapes and colors generally present in the Project area and surrounding landscape.

(c) Accent materials: may be used to enhance architectural interest or increase log or timber structural integrity. These may include metal strapping and/or bracing, corten surfaces, and/or architecturally integral board-formed concrete.

(d) Finishing of natural materials: may include clear or tinted stains. Tinted finishes may be either clear or opaque so long as the coloration is designed to enhance the appearance of the log or timber and that coloration conforms to Section VIII, Article 7.

(e) Materials prohibited in the Custom Mountain Home: include brick (beyond small accent usage), block and slump block, stucco, adobe and similar earthen finishes, shingled vertical surfaces, and heavily contrasting painted surfaces.

(f) No limitations in this section shall limit the use of exterior materials used in the application of deck surfacing or finishing of soffits.

8. **Exterior Colors:** All colors or stains used in the finishing of exterior surface or accents must draw from those hues observed within the Project and surrounding natural environment. The intensity of any hue selected shall fall within the range typical of the surrounding natural features. Colors exhibiting primary color hues and/or with high intensity shall not be used. The ACC shall publish a list of approved roofing material colors.

9. **Antennas:** Antennas for radio, television, or device for the reception or transmission of radio, microwaves, or other similar signals are restricted to the attic or interior of the Living Unit or ADU unless otherwise authorized by the ACC or permitted by federal law. Satellite dish antennas shall be allowed provided they are located in such areas as may be designated by the ACC. In no event shall satellite dish antennas be installed on the ground or be visibly obtrusive to neighboring property or exceed twenty-four (24) inches in diameter or width.

# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0463

Amended CC & R'S PAGE 32 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



A determination of the ACC may not require the Owner placement of dish where an acceptable quality signal cannot be obtained.

10. **Light:** In order to protect the night sky, light used to illuminate garages, patios, parking areas, or for any other purposes, shall be so arranged as to reflect light downward, away from adjacent Living Units and away from the vision of passing motorists and the residents in the valley below the Property. Low-level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.) All light sources must be shaded from the top and no exposed bulbs or high intensity lighting shall be permitted that casts light on things other than the ground. All exterior lighting sources must be low level and with subdued intensity. Bright, glaring lights on rooftops, patio walls, or elsewhere are prohibited. Exterior pole-mounted lights greater than twelve (12) feet in height are not permitted. Exterior pole lights are restricted to a maximum of two (2) and are restricted to the driveway area of the Living Unit. All exterior wall-mounted and low pole mounted lights shall have cut-off shields which to prevent the spread of light in an upward direction to protect the "dark sky" quality of the area. Poles should blend in with the landscape colors and must be approved by ACC. Lights with motion detectors are required so that the lights do not remain illuminated from dusk to dawn. An exterior lighting plan must be submitted for approval by the ACC.

11. **Awnings:** The awning design, material, and color must be harmonious with existing architecture and all awnings require prior approval of the ACC.

12. **Window Tinting:** Window Tinting does not require the approval of the ACC if the color is light or medium smoke gray. All other colors must be approved by the ACC. Mirror or reflective finishes are prohibited.

13. **External Equipment:** All electrical service equipment and sub-panels and all mechanical equipment, including but not limited to, air conditioning, and solar panels, shall be painted to match the surrounding wall color, or painted and screened to blend with the surrounding natural terrain. Roof mounted equipment and vents shall be painted to match the roof or adjacent wall color or screened or integrated into the design of the structure with appropriate materials such as stone/rock.

14. **Water Pressure Valve:** Each Owner shall install a water pressure reduction valve between the main water supply source and their Living Unit when the subdivision engineering requirements dictate such valve to be necessary to reduce excess water pressure from the main water supply source.

15. **Swimming Pools:** No swimming pools, either above ground or below ground, shall be permitted on any Lot in the Project.

16. **Spas:** Spas must be designed as a visual extension of the Living Unit through the use of walls or yards and shall be integrated into the design of the structure with appropriate materials such as wood, stone, or rock. Spas must be constructed according to applicable



ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0464

Amended CC & R'S PAGE 33 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



governmental regulations. Any such spa or spa structure must be pre-approved by the ACC. The spa must be securely covered when not in use.

17. **Patios, Patio Covers, and Gazebos:** Any patio, patio cover, or gazebo must correspond to the homeowners design structure and be similar in architectural style, material, workmanship, size, and appearance. Any such patio, patio cover or gazebo structure must be pre-approved by the ACC.

18. **Playground Equipment:** Commercially constructed swing sets and jungle gyms which may be installed in the rear or side yard, are not to be higher than ten (10) feet and should be adequately screened from the street view or neighboring Lot view. No such playground equipment shall be installed on the view-side of a Lot.

19. **Other Types of Play or Sport Equipment:** Play equipment not defined in Article 18 above, including but not limited to large swing sets, gymnastic and climbing apparatus structures, and playhouses need prior approval of the ACC. The ACC may also consider the impact of such equipment on the view of neighboring Lots and Project area views.

20. **Basketball Backboards:** The ACC must approve the installation of sport equipment or related cement areas. Such areas are discouraged and, if approved, the Lot Owner must provide a landscape to screen equipment from view and provide barrier to prevent the ball from encroaching on a neighbor's property and natural vegetation. Portable basketball backboards will not be permitted on Common Area streets or on the Owner's private drive or in the vicinity of the entrance to the Common Area street from the Owner's private drive.

21. **Security Bars:** Security bars on doors and windows will not be permitted on any Dwelling Unit in the Project.

22. **Landscaping:** The Project is a natural landscape community. A natural landscape is a landscape concept that emphasizes water conservation and low water demand plant materials. A variety of plants, trees, and shrubs are indigenous to this climate and blend with the natural landscape. Such plants, trees, and shrubs have desirable drought tolerant characteristics, foliage, and seasonal flowering. Once established the plant material can survive with little or no water. The ACC shall establish guidelines for landscape plan approval. The ACC shall have discretion to allow variance from the landscape guidelines. Landscaping shall be maintained at a reasonable standard compatible with other homes in the subdivision. The removal of boulders, trees, and other vegetation shall be minimized. Only live plants shall be used for landscaping and in no case shall federally recognized invasive species be allowed. No desert landscaping, colored rock, soil aid, bark, or gravel will be permitted in place of natural vegetation and soils except within the thirty (30)-foot perimeter Yard Area of the Living Unit as designated in the Rules and Regulations of the ACC.

23. **Retaining Walls:** Retaining walls and other similar engineered containment deemed necessary for structural integrity of the Living Unit, Secondary Structure, or driveway

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0465

Amended CC & R'S PAGE 34 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



shall be permitted as characterized by the engineer of record. All retaining walls must be finished with compatible materials to the structures on the Lot..

24. **Yard Walls and Fences:** Yard walls to contain landscape must be built of compatible material to the home. Yard walls may be no higher than four (4) feet in height. All yard walls shall be of stone or other approved masonry materials. Only within the thirty (30) - foot perimeter Yard Area of the Living Unit wood, stone, or other approved masonry may be used to (i) create a visual barrier for HVAC units or for similar utility, or (ii) within areas not visible from the street view of the home to provide a landscaped enclosure. No metal or wire fencing will be permitted except for temporary use to protect newly planted or immature trees and shrubs from wildlife. In limited application fencing may be used on a Lot boundary. Any such fencing shall be two-rail, split-rail fence. No Lot fences will be allowed unless approved by the ACC.

25. **Sight Distance at Intersections:** No fence, wall, or hedge, which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street or road property lines and a line connecting them at points extended thirty (30) feet from the intersection of the street or road property lines.

26. **Owner Liable for Violations:** The Lot Owner shall be liable for required changes to floor plans, colors, materials, etc., by reason of violations of these covenants, or the rules, regulations, or design standards of the ACC.

27. **Architectural Control Committee shall not be Liable:** The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by the ACC. Any errors or omissions in the design of any building, other improvement or landscaping, and any violation of any governmental ordinance are the sole responsibility of the Owner and the Owner's designer, architect, or contractor. The ACC's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.

28. **Approval or Disapproval does not Constitute a Waiver:** The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

29. **Variances:** The ACC may grant variances from compliance with any of the covenants, conditions, restrictions, or provisions of this Declaration with respect to any improvements constructed or to be constructed on a Lot when (1) the specific Section of this Declaration with respect to which the variance is to be granted provides that the ACC may modify the restrictions imposed under the subject Section of this Declaration, approve or otherwise consent to variance or waiver of the provision of the subject Section of this Declaration, or consent to an improvement, use, or activity which does not conform with, or conflicts with, the restrictions imposed under the subject Section of this Declaration, (2) the

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0466

Amended CC & R'S PAGE 35 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



specific section or provision of this Declaration provides for an exception from its requirements or restrictions when the prior approval or consent of the ACC is given or obtained, or (3) in the opinion of the Committee, such variance will not be materially adverse to the overall quality of the Property or to the overall value of other improvements in the Subdivision, or is justified due to unusual or aesthetic considerations, topographic considerations, or similar circumstances; provided, however, that the ACC shall not permit or grant any such variance which would in any way violate or cause the Lot(s) or the Owner(s) to fail to comply with any governmental requirement. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the ACC. In the event a requested variance requires any license, permit, consent, or approval of a governmental authority or other evidence of compliance with a governmental requirement, the ACC may grant the variance subject to and conditional upon the Owner requesting such variance, obtaining such required license, permit, consent, or approval of the governmental authority or providing evidence of compliance with any such governmental requirement. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance in accordance with the provisions of this Section VIII shall not operate to waive any of the covenants, conditions, restrictions, or provisions of this Declaration for any purpose except for the particular purpose(s) of the subject variance and only as to the Lot(s) with respect to which the subject variance was granted.

30. **Fines:** The Board may levy a fine or penalty, consistent with a Schedule of Fines, against any Owner, who fails to refrain from violation of this Declaration, the Rules of the Association, or standards of the ACC, after three (3) days' written notice, and opportunity for a hearing. An additional fine may be levied for a continuing violation. All attorneys' fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefor is made.

31. **Condemnation:** If at any time or times the Common Area or any part thereof shall be taken or condemned by any authority having the power of eminent domain, negotiations, settlements, or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association shall reasonably determine; provided, however, that in the event of taking in which any Lot(s) or portion(s) thereof is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner(s) of such Lot(s) or portion(s) thereof to such Owner(s) and any first Mortgagee(s) of such Lot(s), as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

32. **Approval as Required by Governmental Entity:** No Living Unit, accessory building, addition to a Living Unit, or other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation, or change in natural or approved drainage patterns, or installation of fencing or landscaping elements shall occur on a Lot until

any required permit or required approval therefor is obtained from the appropriate governmental entity. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

33. **Re-subdivision of Lots**: No Lot in this Project shall be divided, subdivided, partitioned, parceled, or broken up into smaller Lots or units.

34. **Damages**: Any damage inflicted on existing natural vegetation, or improvements such as ditches, drives, or streets caused by the Owner and/or their agents or contractor must be repaired by the Owner within ninety (90) days after such damage is discovered. The expense of such repair shall be the joint and several obligation of the person causing such damage, the contractor and/or the Owner.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0467

Amended CC & R'S PAGE 36 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0468

Amended CC & R'S PAGE 37 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## SECTION IX. FINANCES AND OPERATIONS

1. **Creation of Lien and Personal Obligation of Assessment:** Each Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments, fines, or charges and interest, costs of collection, and reasonable attorneys' fees, as hereinafter provided. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due and successors-in-title who took title when assessments were delinquent.

2. **Purpose of Assessments:** Assessments levied by the Association shall be used for (i) the improvement, maintenance, repair, and preservation of the Common Areas; (ii) maintenance and improvement of the Lots where the Owners have failed to do so; and (iii) costs of enforcing this Declaration and the Rules of the Association against an Owner as may be provided for in this Declaration. The Common Area consists of portions outside of Lots, easements for roadways, shoulders and drainage and slope maintenance, and the entry to the Project. The assessments must provide for but are not limited to: the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Area; the payment of management and administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance, and replacement of the Common Areas which must be replaced on a periodic basis; the cost of snow removal from Common entry and access roads; general signage for the Property; legal fees and costs; technical and accounting fees and costs; enforcement costs; compliance costs; taxes, assessments, and impact fees by government entities; assessments made but not discharged or extinguished; and other amounts required that the Board shall determine to be necessary to meet the primary purposes of the Association. The Association agrees to maintain the Common Area roads, including the shoulder and slope areas within the property and make all repairs including but not limited to repairs, resurfacing, striping, and seal coat on the paved or unpaved portions of the road, including shoulders and drainage areas. The cost of such maintenance shall be a common expense of the Association.

3. **Maximum Annual Assessment:** Until January 1 following recording of this Declaration, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00) per Lot.

(a) From and after the date referred to above the maximum annual assessment may be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change, except as above in (a), shall, once a quorum is met, have the assent of fifty-one percent (51%) of all eligible

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0469

Amended CC & R'S PAGE 38 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



voting interests, which Members present in person or represented by proxy or by ballot are entitled to cast at a meeting duly called for the purpose.

4. **Special Assessments for Capital Improvements:** In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the landscape easement areas and the Common entry and access roads; PROVIDED THAT any such special assessment must, once a quorum is met, be assented to by fifty-one percent (51%) of all eligible voting interests, which Members present in person or represented by proxy or by ballot are entitled to cast at a meeting duly called for the purpose, AND PROVIDED FURTHER, that such capital improvements may not be subject to payment through or by special assessments or by regular assessments during the development period. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

For the purposes of Sections 3(b) and 4, a quorum of the Members shall be fifty-one percent (51%) of the total voting interests.

5. **Uniform Rate of Assessment:** Assessments for common expenses must be fixed at a uniform rate for all Lots, regardless of Lot type.

6. **Date of Commencement of Annual Assessments (Due Dates):** The assessments provided for herein shall commence to accrue on the first day of the month following conveyance to a purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Board as to the amount of said assessment, the assessment shall be an amount equal to ninety percent (90%) of the maximum assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Board shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment. The assessment due dates shall be established by the Board.

The Board shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the assessment which roster shall be kept by the treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a written certification signed by an officer of the Association, setting forth whether the assessment on a specified Lot has been paid. Such certification, when properly issued shall be conclusive evidence of the payment of any assessment or fractional part thereof, which has therein shown to be paid.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0470

Amended CC & R'S PAGE 39 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 188.00 BY JENKINS BAGLEY PLLC



7. **Effect of Non-Payment of Assessment:** The amount of any Assessment, charge, fine, penalty, or other amount payable by any Owner or with respect to such Owner's Unit Estate shall become due and payable as specified by the Board and, if not specified, thirty (30) days after any notice of the amount due shall have been given by the Board to such Owner. Unless paid within thirty (30) days of the due date, any such amount shall bear interest at a rate specified by the Board but in no event greater than the maximum amount permitted by law from its original due date until date of payment. Regular and special assessments shall be paid and collected on a monthly, quarterly, semi-annual, or annual basis, as the Board may, from time to time, elect, and shall initially be paid and collected in advance.

Remedies of the Association: Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Board shall set by resolution) until paid. In addition, a late fee of Twenty Dollars (\$20.00) for each delinquent installment shall be imposed.

The Board may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent member. However, the Association may not foreclose, by non-judicial means, upon a lien that includes a fine.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorneys' fees.

8. **Lien for Assessments and Other Amounts:** The regular and special assessments and all charges, fines, penalties, and other amounts (including interest, attorneys' fees and other expenses incurred by the Association in collecting unpaid amounts) payable by an Owner or payable with respect to Owner's Unit Estate shall be a charge on that Owner's Unit Estate; and shall be a continuing lien upon that Owner's Unit Estate; and shall also be the personal, joint, and several obligations of all Owners of the Unit Estate at the time the assessment, charge, fine, penalty, or other amount becomes due.

If an Owner does not pay any assessment, charge, fine, penalty, or other amount or installment thereof and any interest accrued thereon in full thirty (30) days after demand from the Board, the Board may record, in the Official Records of Kane County, Utah, a Notice of Assessment relative to the Owner's Unit Estate. Such notice of assessment shall state the amount of the assessment, charge, fine, penalty, or other amount or installment and any incurred or accruing interest, costs, penalties, attorneys' fees, and other costs of collection, the Owner's name and a description of the Unit Estate with respect to which the assessment, charge, fine,

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0471

Amended CC & R'S PAGE 40 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 185.00 BY JENKINS BAGLEY PLLC



penalty, or other amount has been charged, and shall be signed by an authorized representative of the Association. A copy of said notice of assessment shall be given to the Owner by the Board prior to the expiration of one (1) month following the date of recording. Upon receipt or other satisfaction of all sums due as noted in said notice of assessment, the Board shall cause an additional notice to be recorded stating the satisfaction and the release of the lien evidenced by the notice of assessment.

9. **Exercise of Power of Sale in Enforcement of Lien:** If, after the recording of the notice of assessment, the Owner fails to pay or otherwise satisfy the sums due and accruing, together with all costs, fees, and expenses (including attorneys' fees) incident to the preparation and recording of the notice of assessment and the enforcement of the lien, the Board may enforce the lien evidenced by the notice of assessment on behalf of the Association by sale of the Unit Estate in the same general manner currently set forth in the Utah Statutes for the enforcement of similar liens. A power of sale is hereby conferred upon the Association, which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust or in any other manner permitted by law. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure. However, the Association may not foreclose upon a lien that includes a fine by non-judicial means.

The Association and each Lot Owner hereby conveys and warrants, pursuant to Sections 212 and 302 of the Act, and Utah Code Section 57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engaged to act on its behalf to substitute for Bruce C. Jenkins, with power of sale, the Lot and all improvements on the Lot for the purpose of securing payment of assessments under the terms of this Declaration.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of the Lot.

10. **Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender prior to any assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall not extinguish the assessment lien as to payments, which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after he or she takes title or from the lien of such later assessments.

11. **Tax Collection from Lot Owners by Kane County Authorized:** It is recognized under this Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Kane County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of the monthly assessment will be required to pay to the Association his prorata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Kane County shall be, and is, authorized to collect such prorata



# ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0472

Amended CC & R'S PAGE 41 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Kane County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board may require, in its discretion a special assessment to pay such taxes, or they may be included in the regular assessment budget.

12. **Books, Records, and Audit:** The Association shall maintain current copies of the Declaration, Articles, By-Laws, Rules, and other similar documents, as well as its own books, records, and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers, and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching, or extracting from such documents. A Lot Owner or holder, insurer, or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

13. **Utilities:** The Association shall not pay for the monthly water, sewer, or garbage pick-up charges assessable by the public municipal water system, sewage system, or garbage pick-up system for any Owner's Lot. Each Lot Owner shall pay for such metered and/or monthly charges so levied for that Lot Owner's respective Lot provided by the municipal water system, sewage system, or public garbage pick-up service. Each Lot Owner shall pay for all other utility services, which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

14. **Insurance:** The Association shall secure and at all times maintain the following insurance coverage:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Quarter Circle H. Ranch Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

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

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0473

Amended CC & R'S PAGE 42 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) A fidelity policy or policies to protect against dishonest acts on the part of Board, Officers, manager, employees, and all others (including volunteers), who handle or are responsible for handling, funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all first mortgagees of Lots.

The following additional provisions shall apply with respect to insurance:

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

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

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

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

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

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

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0474

Amended CC & R'S PAGE 43 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



(g) **Mortgagee Clause.** All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(h) **Lots and Living Units Not Insured by Association.** The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage, or other insurance covering any Lot or Living Unit and acts and events occurring thereon. Accordingly, each Owner is encouraged to secure and keep in force at all times fire and extended coverage insurance, which shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the mortgage Loan.

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

16. **Terms of Management Agreement:** Any agreement for professional management of the Development may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

17. **Reserve Analysis/Reserve Fund:** The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent.

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

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

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

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

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0475

Amended CC & R'S PAGE 44 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0476

Amended CC & R'S PAGE 45 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



## SECTION X. GENERAL PROVISIONS

1. **Violation Constitutes Nuisance:** Every act or omission whereby any restriction, covenant, or condition in this Declaration set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Association, or a Lot Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive.

2. **Enforcement:** Each and all of the restrictions, covenants, and conditions contained in this Declaration is and are for the benefit of the Association and of the Lot Owner or Owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants, and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Association or a Lot Owner or Owners; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise.

All attorneys' fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefore is made.

The Board shall have the authority to promulgate rules and regulations for the governance of the Property, and persons with the Property. These rules of the Association shall be compiled by the Board and copies shall be made available to any Owner for inspection and copying at a reasonable cost.

3. **Notice to Owners:** Any notice to an Owner shall be deemed effective upon deposit in the United States mail, postage prepaid, addressed to the Owner at the address for the Lot owned, or at such other address as the Owner may provide in writing to the Association. All notices may be mailed "certified" or "return receipt." If there is more than one (1) Owner for a Lot, notice to one (1) of the Owners shall be deemed effective for all such Owners. It shall be the responsibility of each Owner of a lot to disseminate any notice received to all other Owners. Notwithstanding any other provision in this Declaration, the Articles, By-Laws, or rules and regulations, the Association may provide notice to Owners orally or by electronic means, including text message, email, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail.

4. **Severability**: In the event that any provision, restriction, covenant, or condition is found to be invalid by a court of competent jurisdiction, the remaining provisions, restrictions, covenants, and conditions shall remain in full force and effect.

5. **Duration**: This Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument, signed by the then Owners of two thirds (2/3) of the Lots agreeing to amend or terminate such Declaration, and such instrument has been recorded by the official public records of Kane County, Utah.

6. **Amendment**: This Declaration may be amended by the recording in the Real Property Records of Kane County, Utah, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved fifty-one percent (51%) of the eligible voting interests of the Association.

7. **Conflict with Town Ordinances**: In the event of a conflict between standards or procedures established in or under this Declaration and those established by Town of Orderville ordinances, the more restrictive standard or procedure shall govern.

8. **Action of the Association**: Except as limited in this Declaration or the By-Laws, the Board acts in all instances on behalf of the Association.

9. **Rules Against Perpetuities**: The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, By-Laws, Plat, rules, or other governing documents of the Association. If for any reason this Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

10. **Fines**: The Association has the right to impose fines for violation of these CC&Rs, Design Controls, and rules as defined by a Schedule of Fines and established by the Board.

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0477

Amended CC & R'S PAGE 46 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC



ENTRY NO. 00196807

11/12/2021 03:56:58 PM B: 0573 P: 0478

Amended CC & R'S PAGE 47 / 48  
VERJEAN CARUSO, KANE COUNTY RECORDER  
FEE \$ 186.00 BY JENKINS BAGLEY PLLC



IN WITNESS WHEREOF, the President and Secretary of the Association hereby certify, on this 8<sup>th</sup> day of NOVEMBER 2021, that this Second Amended and Restated Declaration was approved by the Members pursuant to Article X of the Amended and Restated Declaration.

QUARTER CIRCLE H. RANCH OWNERS  
ASSOCIATION, a Utah nonprofit corporation

QUARTER CIRCLE H. RANCH OWNERS  
ASSOCIATION, a Utah nonprofit corporation

By: SCOTT RASMUSSEN  
Its: President

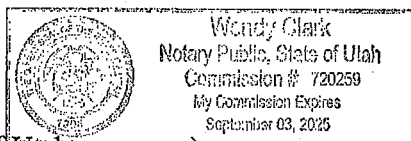
By: Paul Fritz  
Its: Secretary

State of Utah )

:SS.

County of Washington

On this 8<sup>th</sup> day of November, 2021, before me personally appeared Scott Rasmussen, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the President of the Quarter Circle H. Ranch Owners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its By-Laws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.



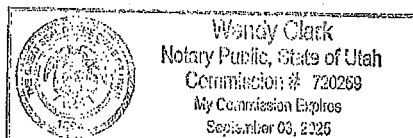
State of Utah )

:SS.

County of Washington

Wendy Clark  
Notary Public

On this 8<sup>th</sup> day of November, 2021, before me personally appeared Paul Fritz, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the Secretary of the Quarter Circle H. Ranch Owners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its By-Laws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.



Wendy Clark  
Notary Public

Second Amended and Restated Declaration

Quarter Circle H Ranch

Page 43

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

This Quarter Circle H Ranch, a Subdivision in Orderville Utah, Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions affects the following real property, all located in Kane County, State of Utah:

All of Lots 1 through 80, Lot RD, Lot B, and Lot CA, together with all Common Area, Quarter Circle H Ranch Final Plat, according to the Official Plat thereof, on file in the Office of the Recorder of Kane County, State of Utah.

PARCEL: O-181-1 through O-181-80

PARCEL: O-181-RD

PARCEL: O-181-B

PARCEL: O-181-CA

**ENTRY NO. 00196807**

11/12/2021 03:56:58 PM B: 0573 P: 0479

Amended CC & R'S PAGE 48 / 48

VERJEAN CARUSO, KANE COUNTY RECORDER

FEE \$ 186.00 BY JENKINS BAGLEY PLLC

