

Declaration Page 1 of 49  
Russell Shirts Washington County Recorder  
11/13/2020 03:47:10 PM Fee \$40.00 By RICHARDS  
LAW, P.C.

WHEN RECORDED, RETURN TO:

Richards Law, PC  
4141 So. Highland Drive, Ste. 225  
Salt Lake City, UT 84124  
801-274-6800

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MOJAVE MESA  
HOMEOWNERS ASSOCIATION  
(INCLUDING BYLAWS)  
A PLANNED UNIT DEVELOPMENT

## TABLE OF CONTENTS

RECITALS.....	3
ARTICLE I - DEFINITIONS .....	3
ARTICLE II - PROPERTY DESCRIPTION.....	6
ARTICLE III – RESTRICTIONS ON USE.....	8
ARTICLE IV - ARCHITECTURAL CONTROL COMMITTEE, BUILDING STANDARDS AND CONSTRUCTION REQUIREMENTS.....	12
ARTICLE V - MAINTENANCE OBLIGATIONS .....	16
ARTICLE VI - ASSESSMENTS .....	17
ARTICLE VII – DECLARANT & BUILDER RIGHTS AND CONTROL .....	22
ARTICLE VIII – THE ASSOCIATION .....	26
ARTICLE IX - COMPLIANCE AND ENFORCEMENT .....	28
ARTICLE X - INSURANCE.....	29
ARTICLE XI - AMENDMENT AND DURATION.....	31
ARTICLE XII - MISCELLANEOUS PROVISIONS .....	32
EXHIBIT A – LEGAL DESCRIPTION .....	36
EXHIBIT B - BYLAWS .....	36

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Declarant (as defined in Article I).

## RECITALS

A. The Declarant is the owner of certain land in Washington County, Utah, shown on the Record of Survey Map of Mojave Mesa to be recorded in the Recorder's Office of Washington County, State of Utah, (the Recorder's Office), and more particularly described in **Exhibit A** attached hereto and made part hereof.

B. It is the intention of the Declarant to develop the land subject to this Declaration as a residential planned unit development and to insure a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens, as set forth herein.

NOW, THEREFORE, the Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth.

## ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

**1.1** "*Act*" means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

**1.2** "*Additional Property*" means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the property, whether or not so described herein or on the plat. When additional property is annexed to this Declaration, it shall become part of this property.

**1.3** "*Architectural Control Committee*" means a committee that is created pursuant to Article IV below.

**1.4** "*Assessment*" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law, including (1) annual assessments; (2) special assessments; and (3) individual assessments as set forth below.

**1.5** "*Association*" means and refers to Mojave Mesa Homeowners Association, or such successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

**1.6** "*Board*" or "*Board of Directors*" shall mean and refer to the Board of Directors of the Association.

**1.7** “*Builder*” means Custom Contracting Corporation, and any successors or assigns or other assigned Builder who files a permitted supplemental Declaration to whom rights and interest in the Property are transferred in writing. Builder shall have equal rights of the Declarant as further explained in this Declaration or unless otherwise stated in this Declaration.

**1.8** “*Bylaws*” means the Bylaws of the Association (initially attached hereto as **Exhibit B**), as they may be amended from time to time.

**1.9** “*Common Area*” means, refers to, and includes: (a) The real property, excluding all Lots as defined herein, and interests in the real property which comprise the Project and which is and are submitted to this Declaration; (b) All common areas and facilities designated as such on the Plat and all property on the Plat excluding the Lots; (c) In general, all apparatus, installations and facilities included within the Project and existing for common use including the perimeter swale drain, storm water detention basin, park strip(s); (d) The Project’s roads (except public roads when the context requires for maintenance purposes); (e) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (f) All common areas as defined in the Act, whether or not enumerated herein.

**1.10** “*Common Expenses*” means and refers to all sums which are required by the Association and the Board to perform or exercise its functions, duties, or rights under the Act or the Governing Documents.

**1.11** “*Community*” means all of the land described in the Plats, including any property annexed into the Project.

**1.12** “*Community Wide Standard*” means the standard of conduct, maintenance, or other activity generally prevailing in the community, as set forth in this Declaration, the Bylaws, and as defined or dictated by the Board from time to time.

**1.13** “*Declarant*” means ANA Enterprises LLC, and any successors or assigns thereof to whom it shall expressly and in writing (a) convey or otherwise transfer all of its right, title and interest in the Property; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof. However, unless expressly stated to the contrary, any vote, right, power, obligation, reference or decision of the Declarant referenced or stated in this Declaration or the Bylaws shall also be applicable to the Builder Custom Contracting Corporation. In other words, unless expressly stated otherwise, all rights, powers and obligations of the “Declarant” shall be held jointly and equally by Builder and Declarant. By way of example but not limitation, if any matter is to be approved by the Declarant (ANA Enterprises LLC) it must also be approved by the Builder. The same applies to privileges and obligations unless otherwise stated in this Declaration.

**1.14** “*Declarant Control Period*” or “*Declarant and Builder Control Period*” means the time between the date of recordation of this Declaration with the Recorder’s Office and the date on which the administrative control of the Association is turned over to the Owners as described herein.

**1.15** “*Development Period*” means the period of time the Declarant has rights to develop the Property or any Additional Property as described in this Declaration.

**1.16** “*Fines*” means and refer to fines levied by the Association against an individual or entity for violations of the Governing Documents. Fines shall be enforced and collected consistent with the Act and are deemed an assessment herein and may be collected as such.

**1.17** “*Governing Documents*” means and refers to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, and architectural or design guidelines.

**1.18** “*Improvements*” means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Living Units, decks, porches, awnings, fences, garages, carports, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

**1.19** “*Living Unit*” means a single-family residential dwelling constructed upon a Lot.

**1.20** “*Lot*” means and refer to a separately numbered and individually described residential lot or parcel of land shown upon the recorded Plat, including any Improvements thereon, with the exception of the Common Area, and designated for private ownership.

**1.21** “*Manager*” or “*Managing Agent*” means and refers to the person or entity retained to manage the Property and the Association according to the direction of the Board.

**1.22** “*Mortgage*” means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument and/or security arrangement, has been recorded among the Recorder's Office.

**1.23** “*Mortgagee*” means the person or entity secured by a Mortgage.

**1.24** “*Owner*” means the record owner of fee simple title to any Lot, as shown in the records of the County Recorder, but does not include a tenant, contract purchaser, or holder of a leasehold interest or person holding only a security interest in a Lot.

**1.25** “*Plat*” or “*Map*” or “*Record of Survey Map*” (these terms may be used interchangeably herein) means the Record of Survey Maps entitled Mojave Mesa recorded at the Recorder's Office of Washington County, as the same may be amended or substituted, together with any plat recorded for an additional phase of the Project. Exhibit A contains the real property described on the Plat Maps.

**1.26** “*Property*” or “*Project*” means all of the real property and interests described within the boundaries of the named project in the Plats, including all Lots, Common Area, easements, and open space.

**1.27** “*Rules and Regulations*” means and refers to those rules and regulations adopted, added to amended or repealed by the Board from time to time that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of, the Property and Association. Rules may be revised and changed to adapt to the evolving needs of the Association, as determined in the sole

discretion of the Declarant until the point of the Turnover Meeting. Thereafter, the Board may adopt Rules and Regulations as provided herein and by the Act.

**1.28 "Turnover Meeting"** means the meeting at which the Declarant turns over administrative control of the Association to the Owners pursuant to this Declaration.

## **ARTICLE II - PROPERTY DESCRIPTION**

**2.1 Property Subject the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property and interests described in the Plats, including any property annexed into the Project, and including the Lots described on **Exhibit A** attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

**2.2 Description and Legal Status of Lots.** The Map shows the Lots, their locations, dimensions from which their areas may be determined together with the Definitions above, and the Common Areas. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

**2.3 Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Record of Survey Map with appropriate reference to said Map and to this Declaration, as each shall appear on the records of the County Recorder, State of Utah, and in substantially the following form:

Lot \_\_\_, shown on the Record of Survey Map for Mojave Mesa, appearing in the records of the County Recorder as Entry No. \_\_\_ Map No. \_\_\_, and as identified in the Declaration of Covenants, Conditions and Restrictions appearing as Entry No. \_\_\_ in Book \_\_\_ at Pages \_\_\_ of the official records of the County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto.

**2.4 Use and Occupancy.** Except as otherwise expressly provided in the Governing Documents, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

**2.5 *Easements Reserved.*** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of Declarant, its successor and assigns, the Owners, and the Association:

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot (but not the Living Unit) for the purpose of performing maintenance referred to herein and determining whether or not the Lot is in compliance with the Governing Documents or whether the use of the Lot is causing damage or harm to the Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(b) **Utility Easements.** Declarant, its successors and assigns, the Association, or any public utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary and as may be designated on the Plat or separate easement. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(c) **Common Areas.** All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas.

(d) **Entrance, Construction and Maintenance.** Declarant hereby reserves for itself and grants to the Association an easement, to the extent needed, for entry to the Project and for the construction, maintenance and repair of the Entry Monument(s), perimeter swale drain, all utility, drainage and irrigation systems and facilities, and all other Common Areas over which the Association has obligations under this Declaration.

(e) **Swale Drain/Drainage System(s).** Declarant hereby reserves to itself and hereby grants to the Association a drainage easement and right of way, as noted herein and/or as shown on the recorded Plat(s), for the purpose of constructing, operating, maintaining, repairing, replacing, extending, re-locating and/or removing the swale drain or other drainage systems and facilities to, from, under, across, upon and through the Property.

**2.6 *No Encroachment.*** No Lot shall encroach upon an adjoining Lot without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Board or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and

non-disturbance of the structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

### **ARTICLE III – RESTRICTIONS ON USE**

**3.1 Residential Use.** Lots shall be used for single residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities that cause additional pedestrian or vehicular traffic or create a sight or noise nuisance shall be conducted on any Lot or in any other portion of the Project.

**3.2 Animals.**

(a) The Board of Directors shall have the express authority and right to promulgate Rules and Regulations, beyond those stated restrictions specifically stated herein, restricting the keeping of pets which may modify any provision of this Section 3.2 upon notice to the members.

(b) Subject to Section 3.2(a), no more than two (2) animals (only dogs and cats) shall be kept within any Lot. Additionally, no animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep such dog on a leash when outside of the Lot or keep it confined within the Lot.

(c) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from the Lots and Common Areas.

(d) An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection.

**3.3 Offensive Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

**3.4 Unlawful Activities.** No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**3.5 Firearms.** No firearms shall be discharged upon the Property.

**3.6 Pest Control.** Owners shall not permit any thing or condition to exist upon the Lot which could induce, breed, or harbor infectious plant diseases, noxious insects or other pests. Each Owner shall perform such pest control activities on the Lot as may be necessary to prevent insects, rodents, and other pests from being present on the Lot.

**3.7 Rubbish and Trash.** No Lot or part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container screened from public view, except on trash collection days and the 12 hours before a trash collection day. All such waste and garbage must be promptly and periodically removed. No trash or other waste shall be burned upon the Property. Notwithstanding the foregoing, composting of organic matter is allowed.

**3.8 Sewage Disposal.** Each Living Unit shall be connected to and use the public sewage disposal system. No individual sewage disposal system, septic tank, shall be permitted on any Lot, part or portion of the Property.

**3.9 Water Supply.** Each Living Unit shall be connected to and use the municipal culinary water supply. No individual culinary water supply system to wells shall be used or permitted to be used on a Lot, part or portion of the Property. Initially culinary water shall be used for all outside watering; however, upon Ivins City providing secondary irrigation water to the Project, all outside watering, other than through hose bibs plumed directly to the Living Unit, shall be through the irrigation system provided by Ivins City.

**3.10 Vehicles in Disrepair.**

(a) No automobile, recreational vehicle, commercial vehicle, or other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired, or repainted, unless performed in the garage to screen the sight and sound of such activity from streets and neighboring Lots. No such repair or service work shall be performed on streets, driveways, or the front or side setback areas of any Lot.

(b) Inoperable vehicles (motor vehicles unable to operate in a normal manner upon the public streets under their own power, or any vehicle required to be licensed or registered, which are not for a period of six (6) weeks or more past their expiration), are prohibited on the Property or Lot, and may be subject to removal.

(c) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board of Directors reasonably determines that its presence offends the occupants of the other Lots.

(d) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board of Directors may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

**3.11 *Parking.*** Parking on any road within the Property, including public roads (if any), may be regulated and governed by resolution of the Board. The Board may adopt and amend Rules to restrict, regulate and govern the parking of vehicles in the Property (including the Lots). An Owner may be assessed the expense of removing any vehicle or equipment parked in violation of any rule or of this section and the cost of any storage thereof.

**3.12 *Boats, Recreational Vehicles, RV's and Trailers.*** Boats, recreational vehicles (RV's), trailers, campers, or other such vehicles and equipment shall NOT be stored upon any part of the Lot, except for temporary periods of loading and unloading, which shall not exceed forty-eight (48) hours and for no more than one 48 hour period in any given seven day period. Such a 48-hour period shall begin upon the first instance of parking of the vehicle and shall expire 48 hours later regardless of whether the vehicle is parked continuously for 48 hours. Utility flatbed trailers may be stored on the side of the Living Unit, screened from the street and other Lots, and must be below the height of the block walls and gates. Screened is defined as below the fence line on a Lot.

The Board may adopt and amend Rules to restrict, regulate and govern the parking of vehicles in the Property (including on the Lots). An Owner may be assessed the expense of removing any vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

**3.13 *Clothes Lines and Materials.*** No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Living Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Lot unless in an area screened from public view.

**3.14 *Oil and Mining Operations.*** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

**3.15 *Antenna and Dish Policy.*** All installations shall be governed by the Federal Over the Air Reception Device ("OTARD") Rule of the Federal Communication Commission. To be consistent therewith, Owners are encouraged to use cable service for television and Internet. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas (dishes) one meter in diameter or less and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed only to the extent and in locations allowed herein and by local, state or federal law. All other antennas are prohibited. "Antenna" as used herein includes satellite dish antennas. A requirement to paint or use a certain color for dishes/antennas may be established by Association rule.

**3.16 *Signs.*** No sign of any kind shall be displayed to the public view without the prior written approval of the Board. The Association may from time to time, by rule, restrict or prohibit the display of signs, advertisements, posters, flags and banners of any kind displayed to the public

view or the Common Area based on objective criteria, and pursuant to law.

**3.17 Fences.** No fences will be allowed unless otherwise approved in writing by the Architectural Control Committee. If fences are permitted, the enclosing Owner shall be responsible for the repair and replacement of the fence.

**3.18 Noise Disturbance.** Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb other residents. Noise disturbances shall subject the Owner of the Lot from which the noise originates to a fine, as levied by the Board of Directors in its sole discretion.

**3.19 Drainage/Water Flow.** No person may change the direction or flow of drainage channels or obstruct or retard the flow of water through the channels established by the Declarant, over, to, from, under, across and through the Property. No person may do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of such utilities, facilities, systems, and patterns, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the established channels in the easements and rights of way. If any such improvements, facilities, systems or patterns are altered, the Declarant expressly reserves the right to enter onto the property in order to restore the area without being guilty of trespass. The person responsible for the damage and the work shall be liable for the costs of repair and restoration.

**3.20 Landscaping.** Initial landscaping must be subject to approval from the Architectural Control Committee. Lots and landscaping thereon shall be maintained in a manner so as not to detract from the appearance of the Lot or affect the value or use of any Lot. Owners shall keep their Lot free from rubbish, litter and noxious weeds and shall be maintained in good condition and repair at all times. Trees, shrubs, hedges, other landscaping, or improvements on Lots shall not be allowed over fifteen (15) feet in height.

**3.21 Increase in Insurance Cost.** Nothing shall be done or kept within any Lot or on the Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Lot or Common Areas which will result in cancellation of insurance on any Lot.

**3.22 Rental and Leases.** All rentals, including minimum rental/lease terms, shall comply with the ordinances of Ivins City, as may change from time-to-time.

**3.23 Association Rules and Regulations.** In addition to the restrictions and requirements above, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Lots and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Rules and Regulations may change and evolve over time to address the perceived needs of the Association. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration.

A schedule of fines may be adopted by the Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## **ARTICLE IV - ARCHITECTURAL CONTROL COMMITTEE, BUILDING STANDARDS AND CONSTRUCTION REQUIREMENTS**

**4.1 Architectural Control Committee.** An Architectural Control Committee (“ACC”) shall exist for the purposes set forth in this Article, including without limitations, to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project, whether new construction, remodel projects or other improvements.

**4.2 Members.** The Architectural Control Committee shall consist of four (4) members. Two (2) member shall be a representative of the Declarant ANA, and two (2) members shall be representatives of the Builder Custom Contracting Corp until the time of Declarant Turnover. In the event of a split decision which cannot be resolved, a mutually agreed upon 3<sup>rd</sup> party attorney shall break the tie. Upon Declarant turnover, the Architectural Control Committee shall consist of three (3) Association Members, appointed by the Board. In the event a committee is not appointed by the Board, the Architectural Control Committee shall be the Board.

**4.3 Approval of Plans and Specifications.** Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, including by way of illustration but not limitation for all Living Units and Improvements shall be submitted to the ACC for review and approval (or disapproval). In addition, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ACC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Failure of the ACC to respond to a submission shall never be deemed approval of said plans. Decisions of the ACC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ACC members change over time. No Building shall be erected, placed or altered on any Lot until the construction plans and specifications, including a plan showing the location of the structure upon the Lot have been approved by the ACC and it has been determined that the proposed quality of construction, harmony of external design, topography, landscaping, drainage, and finish grade elevation are acceptable. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line unless similarly approved.

**4.4 Design Guidelines.** Design and construction of the Lots and Living Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (collectively referred to as “**Design Guidelines**”). Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All builders and Owners shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted.

(a) Prohibited Structures. The following structures are prohibited within the Project: dome structures, log homes, pre-manufactured homes, earth or berm homes, and relocated homes. No structure of temporary nature, including but not limited to a trailer, bus, motorhome, tent, shack, garage, or shed, shall be used at any time as a residence.

(b) Minimum Living Unit Size. The total living area of any Living Unit constructed on a Lot within the Project shall be no less than 1300 square feet, excluding porches, patios or courtyards.

(c) Building Height. No Living Unit shall exceed the maximum height permitted by Ivins City Ordinance.

(d) Exterior Building Materials. Exterior walls shall be of new materials, limited to the following: stucco with stone accents. Color of the exterior shall be earth tone and selected from the ACC approved samples for Mojave Mesa. If a color different from the approved sample colors is desired, proposed colors must be approved in writing by the ACC. Vinyl shall not be allowed on Living Units; wood and cement board siding as accents materials may be approved by the ACC.

(e) Roofing Materials. Roofing materials shall be limited to (flat) slate, clay, or concrete tiles, selected from the approved samples for Mojave Mesa. Color of the roof shall be subdued earth tone. Asphalt shingles are not permitted. Flat roofs shall be a 412c, or darker; or as required by the ACC; or as contained in the Rules and Regulations or Design Guidelines.

(f) Garages. All Living Units constructed on a Lot shall include a fully enclosed, private garage, built to accommodate at least two (2) vehicles. Garage door color shall be dark brown.

(g) Colors. In order to complement the Property's natural surroundings, and neighboring development, earth tones shall be used as the primary colors for exterior surfaces and materials.

(h) Accessory Buildings. Barns, sheds, coops, hutches, or other utility or accessory buildings are not permitted on the Lot or any portion of the Property, unless approved by the ACC and lower than six (6) feet or the appurtenant block wall, whichever is lower. Accessory Buildings may be further regulated by specific Rule or Design Guidelines to best address the aesthetic and related needs of the Association.

(i) Driveways and Walkways. There shall be enough area on the driveway, excluding sidewalk areas, to park at least two (2) vehicles per Lot. The driveway shall be paved with concrete or pavers.

(j) Sight Obstructions. All Improvement heights shall conform to Ivins City sight obstruction ordinances.

(k) Viewshed. Viewshed is a geographical area that is visible from a location. To maintain and preserve views of the surrounding hills, valleys and mountains, there will be no trees or shrubs that shall grow over fifteen (15) feet height. No trees will be permitted within fifteen (15) feet from the rear Property corners.

(l) Walls, Fences and Other Barriers. Walls, fences and other separating barriers must utilize masonry blocks of new construction. Such separating barriers shall match the existing exterior perimeter wall along Highway 91. No walls or fences shall be allowed in front of the front set back areas. Walls or fences must not exceed more than six (6) feet in height. Block walls shall not be taller than six (6) feet in height from the higher of two connecting Lots.

(m) External Television or Other Antennas. A maximum of two (2) antennas or satellite dishes, three feet or less in diameter, may be fixed to the exterior of the Living Unit and painted as set forth in the Rules or Design Guidelines.

(n) External Illumination. In order to protect the Ivins City Night Sky Initiative, and reduce light pollution, exterior lights, including but limited to light used to illuminate garages, patios, or for any other purposes, must be low level and shall be arranged and shielded as to reflect light away from adjacent homes and away from the vision of passing motorists. Only low-level outdoor illumination may be used for particular landscape features. No exposed bulbs are permitted. Exterior lighting on Living Units shall conform to Ivins City lighting Ordinances. For the safety of the Property, the Architectural Control Committee will require each Living Unit to have some exterior lighting on a timer to minimally light the streets at night. Additional Rules may be adopted to protect the natural night sky.

(o) Landscaping. Landscaping of the front of the Lot shall be completed prior to occupancy. Landscaping shall be at a reasonable standard compared with other Lots in the Project. The front yard landscaping shall have a maximum of twenty five percent (25%) of lawn, with no minimum lawn area being required. Landscape gravel, boulders, or other material shall be of a consistent color throughout the project to create continuity and flow.

**4.5 Construction and Contractor Provisions.** Contractors, subcontractors, builders, and other such individuals shall be subject to the following:

(a) Completion of Construction. The construction of any building on any portion of the Property shall be continuously and diligently pursued upon commencement of such construction.

(b) Dust and Noise Control. The Lot Owner and their contractor shall be responsible for controlling dust and noise from the construction site, access roadways, and adjacent properties, including the removal of dirt and mud that is a result of construction activity on the site. The volume of stereos, radios, or any other equipment must be maintained at a reasonable level that does not disturb the quiet peace and enjoyment of other Lot Owners in the Property and surrounding neighborhood.

(c) **Damages.** Any damage inflicted on existing improvements such as curb, gutters, streets, concrete sidewalks, utilities, etc., by the Owner and/or their agents, guests or contractors must be repaired within thirty (30) days after such damage is discovered. Repair shall be at the expense of the Owner.

(d) **Maintenance of Lot During Construction.** Contractors and subcontractors must provide onsite dumpsters during construction and are required to maintain a clean work site. Dumpsters must be emptied as often as necessary to maintain a clean work site. Dirt and mud from the construction site or elsewhere, dispersed directly or indirectly, on the public streets and sidewalks within the Property must be cleaned.

(e) **Excavation and Grading.** Excavation and grading shall be in accordance with the current requirements of Ivins City building codes.

(f) **Concrete Trucks.** Concrete trucks may be washed out only on the Lot being built and inside the construction area. The Owner and their contractor(s) are responsible for containing all washout materials to prevent such from entering washes and landscaping, as well as keeping all other materials and waste from entering the streets and gutters.

(g) **Sanitary Facilities.** Each Owner and their contractor(s) shall be responsible for providing adequate sanitary facilities, including portable toilets for workers during construction.

(h) **Material Deliveries.** All building materials, equipment and machinery required to construct a Living Unit or other Improvements on a Lot must be delivered to and remain upon the Lot to which it is connected. This includes, but is not limited to, building materials, earth moving equipment, trailers, generators, mixers, cranes, and any other equipment or machinery.

(i) **Prohibited Items.** Construction crews are prohibited from carrying any type of firearm or consuming alcohol or other controlled substance on the Property. The accumulation of potentially flammable materials constituting a fire hazard on the construction site is also prohibited.

(j) **Restoration of Property.** Upon completion of construction, each Owner and their contractor(s) shall repair any and all property damaged by them or their invitees.

(k) **Daily Operations.** There shall be no construction activities as set forth pursuant to Ivins City Ordinance, as may be amended from time to time.

**4.6 Easements.** Easements for the installation of and maintenance of utilities and drainage facilities, and ingress and egress are reserved as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**4.7 *Builder Exempt.*** This Article IV shall not apply to the Builder or Lots owned by the Builder.

## ARTICLE V - MAINTENANCE OBLIGATIONS

### **5.1 *Owner's Responsibility.***

(a) Except to the extent that the Association is responsible therefor under Section 5.2, maintenance of the Lots and the Living Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Living Unit in good condition and repair. All Lots and any Improvements thereon shall be kept in safe, sound and in good condition and repair at all times. Any part of any fixture, pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Living Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Living Unit or Lot.

(b) **Fences and Fenced-in Areas.**

(1) In any case where a fence is installed, the Owner whose Lot directly enjoys the benefit of the fence or fenced enclosure shall be responsible for all maintenance, repair and replacement of the fence, as well as landscaping and improvements within the area enclosed by such fence, including sprinkler lines, fixtures, and accessories.

(2) **Additional Requirements.** The Board may adopt rules from time to time further regulating fences and clarifying or otherwise expanding the provisions of this Section and may impose additional requirements for an Owner to continue to keep a fence or obtain approval to install a fence.

(c) **Snow Removal.** Each Lot Owner shall be responsible to clear snow and ice from his or her Lot as necessary, including from any walkway, entryway and driveway appurtenant to the Lot.

**5.2 *Maintenance by Association.*** The Association shall maintain the Common Areas of the Property, unless otherwise stated in this Declaration, including, but not limited to, storm water detention basin maintenance, any private road maintenance, entry monument maintenance, perimeter swale drain, snow storage area, if any. However, if the Common Areas or a Lot is damaged by the willful misconduct or negligence of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage.

To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association

responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

Additionally, the Association, by and through the Board, may assume the Owner's general maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall constitute an assessment and collected in the same manner as assessments pursuant to this Declaration.

## **ARTICLE VI - ASSESSMENTS**

### ***6.1 Covenant for Assessments.***

(a) Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

- (1) Annual common assessments (the "Annual Assessment") as provided below.
- (2) Special assessments ("Special Assessments") as provided below.
- (3) Individual assessments ("Individual Assessments") as provided below.

(b) No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such member.

### ***6.2 Annual Budget and Assessment.***

(a) Adoption of Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### **(b) Determination of Annual Assessment.**

(1) The Board shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

(2) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(3) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

**6.3 Apportionment of Assessments.** Subject to Subsection (d) of this section, assessments shall be apportioned as follows:

(a) Annual and Special Assessments. Subject to subsection (d) below, all Lots shall pay an equal share of the Annual Assessment and Special Assessments commencing upon the date the Lots are made subject to this Declaration.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided for below.

(c) Payment of Assessments. Installments of Annual Assessments shall be levied and collected on a annual or biannual basis as determined by the Board. However, upon resolution of the Board of Directors, installments of Annual Assessments may be levied, due and collected on a monthly, quarterly, or periodic basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

(d) Builder and Declarant Assessment Apportionment. Notwithstanding anything herein to the contrary, any Lot owned by the Builder or Declarant shall be exempt from payment of Assessments until a Living Unit on a Lot receives a certificate of occupancy, except that any model home owned by Builder or Declarant shall be exempt from all Assessment obligations until it is sold to the first consumer purchaser.

**6.4 Purpose of Assessments.** The Assessments levied by the Association shall be used for payment of Common Expenses and any other expense incurred by the Association, including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; and (e) The cost of

funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below.

**6.5 *Special Assessments.*** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time ("Special Assessment") for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Member may only be levied if it is first voted upon by the Members and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Members representing at least 30% of the total Association voting rights cast a vote. The written consent of Declarant as long as the Declarant owns at least one Lot must also be obtained prior to levying any Special Assessment.

**6.6 *Individual Assessments.*** Any expenses which are not common expenses, and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted. Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association; (2) Expenses, other than common expenses, relating to the cost of maintenance, repair replacement and reserves of the Lots which may be incurred by the Association.

**6.7 *Nonpayment of Assessments.*** The Annual Assessments, which by default shall be a biannual assessment unless changed by the Board, shall be due and payable on a biannual basis on the first (1st) day of January and the first (1<sup>st</sup>) day of June in the applicable year, unless otherwise provided by the Board, and shall be delinquent if not paid after 30 days or within such other period established by the Board from time to time (the "date of delinquency"). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

(a) Interest. Delinquent payments shall bear interest beginning thirty days after the date of delinquency at the rate established by the Board.

(b) Late Charge. Delinquent payments shall be subject to a late charge of Ten Dollars (\$10.00), or such other amount as determined by the Board from time to time.

(c) Acceleration. If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

(d) **Rent Payments by Tenant to Association.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amount dues to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

(e) **Remedies, Including Suspension of Membership Rights and Services.** All membership rights, including the right of a Member to vote, shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. Any service provided by the Association to the Owners shall also be terminated as to the delinquent Owner at the discretion of the Board. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**6.8 *Lien.*** The Annual Assessment and all other Assessments imposed together with damages, fines, interest, costs of collection, late charges, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Lots against which the assessment or charge is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

**6.9 *Personal Obligation and Costs of Collection.*** Assessments imposed under this Declaration, together with late charges and interest at a rate to be established by the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**6.10 *Appointment of Trustee.*** As required by Utah Code, the Declarant the Association and each Owner hereby appoints the attorney for the Association, as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time. The Association may, without amendment or supplement to this Declaration, appoint a successor trustee at any time by filing for record in the office of the county recorder a substitution of trustee.

**6.11 Enforcement of Lien.** The Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 (or other applicable section of the Act) (as the same may be amended from time to time) to the trustee, who shall be the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of Assessments under the terms of the Declaration. The lien may be foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**6.12 Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability or lien for any Assessments thereafter becoming due.

**6.13 Reserve Funds.**

(a) The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors in its sole discretion and best business judgment or by any method required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate.

(c) The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board of Directors members shall not be held liable for any potential or alleged under funding of the reserve account.

**6.14 Amounts Due on Transfer of Lot.** Each time legal title to a Lot passes from one Owner to another, within thirty (30) days after the effective date of such title transaction, the new Lot

Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee in an amount determined by the Board from time to time.

**6.15 Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**6.16 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot up the maximum amount allowed by law.

## ARTICLE VII – DECLARANT & BUILDER RIGHTS AND CONTROL

**7.1 Administrative Control of Association.** Declarant (See 1.13 above) shall assume full administrative control of the Association through a Declarant appointed interim Board, which shall serve until the Turnover Meeting (or the "Control Period"). The Turnover Meeting shall be held upon the earlier of the following:

(a) Two years after the Declarant has conveyed one hundred percent (100%) of all of the Lots reflected on Exhibit A and then for ten (10) years thereafter, unless additional land has been annexed into the Property by that time, in which case Declarant shall have full administrative control for ten (10) years after one hundred percent (100%) of all of the Lots in the annexed property have been sold; or

(b) The Declarant, however, may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice. For purposes of Declarant & Builder rights and control, they cannot act and decide matters separately, they must uniform in their decision. No one party has more rights than the other under this Declaration or the Bylaws unless expressly stated otherwise.

**7.2 Other Rights.** In addition to any other rights under this Declaration or the Bylaws, as long as Builder owns at least one (1) Lot within the Property, Builder:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model in one or more of the Lots which Builder owns. Builder and prospective purchasers and their

agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) For Sale and Other Signs. May maintain a reasonable number of For Sale and other signs, the size of which may be determined by Declarant, at reasonable locations on the Property.

(c) Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, for two years after the Declarant has conveyed one hundred percent (100%) of all of the Lots in the first recorded Plat (the first phase), or two (2) after any additional land has been annexed into the Property and Declarant has conveyed one hundred percent (100%) of all of the Lots in such annexed property, the approval of the Declarant and Builder, unitedly, shall be required in order to adopt any amendment to the Declaration or Bylaws of the Association.

(d) The Act. The Declarant appointed Board and the Association is exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Development Period and all rights authorized to be reserved by a Declarant under the Act are hereby deemed reserved. The Declarant and Declarant appointed Board are exempt from association Rules and the rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by Declarant.

**7.3 Easements Reserved to Declarant.** Declarant reserves unto itself and its successors and assigns:

(a) Non-exclusive easements and rights of way over any strips or parcels of land designated or to be designated on the Plat as drainage and utility easements, sewer easements, drainage and sewage easements, open space, common area or otherwise designated as an easement area over any road or on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

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

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

(d) Declarant further reserves unto itself, for itself and any builder, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property, other than those Lots conveyed to Owners, for all purposes necessary or appropriate to the full and final completion of construction of the Community.

The Declarant will take reasonable steps to avoid unduly interfering with the beneficial use of the Lots by Owners.

**7.4 Pre-Litigation Requirements.** Notwithstanding any other provision to the contrary in this Declaration and in addition to any requirement under Utah Law, the Association, nor any member thereof, shall not file, commence or maintain any lawsuits, actions or legal proceedings against Builder or Declarant, the individual managers, owners, members or officers of the Builder or Declarant, Builder or Declarant's contractors, or any other person or entity involved in the construction of the Lots unless and until all of the following requirements have been satisfied:

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget");

(b) A copy of the opinion letter described above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Builder and Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to requirements above.

If any claims or actions falling within the scope of this Section 7.4 are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 7.4, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 7.4 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any type of assessment or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section apply to claims or actions that individual Owners may file relating solely to their own properties. Individual Owners, however,

shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

Notwithstanding the provision of Article XI, the term of this Article VII, Section 7.4 may not be amended or omitted without the prior written consent of the Declarant, as defined in Section 1.13.

**7.5 Expansion of Property, Discretion to Expand Community.** Declarant, not the Builder, reserves the right at its sole discretion to expand the Properties to include additional land by vote of the Declarant without the consent of the Owners for a period of twenty (20) years from the date of recording this Declaration in the office of the County Recorder, State of Utah, and this expansion right may be renewed for additional periods of ten (10) years thereafter. No representations, promises, or guarantees are being made in that regard, however.

**7.6 No Limitations on Amount of Expansion.** There are no limitations on the maximum or minimum amount of the above property which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order.

**7.7 Process for Expansion.** Expansion shall occur by the Declarant (not Builder) recording (1) an additional plat or plats creating additional phases for lots in the Project; and (2) a declaration of annexation (or supplemental declaration) which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a declaration of annexation, the property described therein shall be subject in all respects to this Declaration.

**7.8 Limitations on Expansion.**

(a) Any additional properties annexed hereto by the Declarant (not Builder) shall be for any purposes as determined solely by Declarant (not Builder), including residential purposes or otherwise. Any additional properties annexed hereto by the Declarant (not Builder) may or may not be architecturally compatible with the existing Living Units and may or may not be of similar quality. The Declarant makes no assurances that any Living Unit constructed on any additional properties annexed hereto by the Declarant will be substantially or in any way identical to the Living Units depicted in the plat. No assurances are made as to the improvement or as to the location of said improvements which shall be made on the additional land.

(b) The Declarant shall have the sole discretion as to the development of the Common Area in any expansion area or additional land and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such common areas, if any, shall be managed and maintained by the Association.

(c) All taxes and other assessments relating to property to be added must be paid or provided for by the Declarant prior to the addition of the property. Liens arising in connection with Declarant's interest in the property to be added must not adversely affect the rights of existing Lot Owners or the priority of existing first mortgages on the Property.

## ARTICLE VIII – THE ASSOCIATION

### **8.1     *Organization***

(a)     The Association has been or will be organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time).

(b)     The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. However, the Board, upon its own motion, may re-incorporate the Association without a vote of the Owners. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c)     The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws.

**8.2     *Membership.*** Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**8.3     *Voting Rights.*** The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

(a)     **Lots.** Subject to any rights granted to Declarant, each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

(b)     **Declarant.** For each Lot owned by Declarant, there shall have six (6) votes (to be shared equally between Declarant and Builder).

**8.4     *Powers, Duties and Obligations.*** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

(a)     **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the

Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(1) The Association shall maintain the Common Areas.

(2) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(3) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(4) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board.

(b) Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, the Nonprofit Corporations Act and any Bylaws, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(1) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter into any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(2) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties

of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

(i) Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Officers may from time to time deem desirable;

(ii) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable.

(3) The Officers may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

**8.5 Adoption of Bylaws, Appointment of Interim Board of Directors.** The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting as provided above.

## **ARTICLE IX - COMPLIANCE AND ENFORCEMENT**

**9.1 Compliance.** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for, among other things, levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**9.2 Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

(a) Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy fines, and a violation of any specific and express rule, regulation, covenant, restriction, or term of any Governing Document of the Association (a "violation"), and

any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Board from time to time. A subsequent occurrence of the same violation occurring within 12 months of a prior occurrence is and shall be deemed the same violation for all purposes, including the purpose of notice, and each such subsequent occurrence shall be subject to an immediate fine without further warning or notice;

(d) To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

(e) To suspend the voting rights for any violation of any of the Governing Documents, but not for longer than 60 days except in the case of a continuous violation;

(f) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or

(g) To record, in the records of the County Recorder, against a Lot as to which a violation exists relating to the land or improvements on the land and the noncompliance of such land or improvements with the Governing Documents, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied by the Owner or future Owner of the Lot.

**9.3 Action by Owners.** Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**9.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

## ARTICLE X - INSURANCE

**10.1 Types of Insurance Maintained by the Association.** The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, the following insurance, as well as such other insurance as it deems reasonable:

(a) Property and Liability Insurance. Property insurance, if required by law or deemed necessary by the Board, as well as liability insurance with adequate limits of liability for

bodily injury and property damage, consistent with that of similarly situated first-class subdivisions in the county and as consistent with the Act.

(b) Fidelity Bonds. Fidelity bond or bonds covering all Board members, officers, employees and other persons handling or responsible for the funds of, or administered by, the Association, in such amounts as the Board of Directors deems appropriate, but no less than a sum equal to three months aggregate assessments on all Lots plus reserve funds. Where the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent shall maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the Managing Agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or insurance trustee;

(c) Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

(1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

(3) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.

(4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance..

**10.2 Owner's Insurance.** Each Owner and resident shall purchase and maintain adequate liability and property insurance on his or her Lot.

(a) Primary Coverage. The insurance coverage of an Owner shall be primary. The Association shall not maintain insurance on an Owner's Lot, Living Unit, personal property, or contents.

(b) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of its Lot or Living Unit, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(c) Failure to Repair. If the Board determines that any Owner has failed to properly discharge its obligation with regard to the repair or reconstruction of the damaged structure, then the Association may, but is not obligated to, provide such repair or reconstruction at the Owner's sole cost and expense.

## **ARTICLE XI - AMENDMENT AND DURATION**

### ***11.1 Amendments.***

(a) How Proposed. Amendments to the Declaration shall be proposed to the membership by and through the Board upon the request of (1) a majority of the Board of Directors, or (2) Owners holding thirty percent (30%) or more of the voting rights of the Association, in which case the Board shall cause the amendment to be proposed to the membership within 65 days of receipt such request. The Board shall cause the proposed amendment to be appropriately reduced to writing, which shall then be included in the notice of any meeting at which action is to be taken thereon or attached to any request for vote on or consent to the amendment.

(b) Approval Required. Except as may be otherwise set forth in this Declaration, this Declaration may be amended, and any provision, covenant, condition or restriction whatsoever, may thereby be added, modified or deleted, if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Property, any and all amendments proposed pursuant to this Section must first receive the written approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Declarant Amendments. Notwithstanding the foregoing, the Declarant may amend this Declaration at any time until the Turnover Meeting for any purpose whatsoever. Article VII, Section 7.4 may not be amended without the prior written consent of the Declarant, as defined, and set forth in Section 1.13.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

**11.2 Duration.** The provisions, covenants, conditions and restrictions contained in this Declaration, as amended in whole or in part from time to time as provided above, shall continue and remain in full force and effect until there is recorded an instrument directing the permanent termination of this Declaration and the Association after the vote and approval of seventy-five percent (75%) of all of the Owners of the Lots. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**12.1 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**12.2 Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**12.3 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**12.4 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association, the Board of Directors or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to

constitute precedent or estoppel impairing the right of the Declarant, Association, Board of Directors or Owner as to any similar matter.

**12.5 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

**12.6 Premises Liability.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association—and not Declarant, and an Owner shall defend, indemnify and hold harmless the Declarant against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**12.7 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, ANA Enterprises, LLC, has executed this Declaration this 11<sup>th</sup> day of November, 2020.

**ANA ENTERPRISES, LLC**

  
By: Declarant Manager

STATE OF UTAH )  
ss:  
County of Washington )

The foregoing instrument was acknowledged before me on this 11<sup>th</sup> day of November, 2020 by KOUBI ANDREAS MAMAKI of ANA Enterprises, LLC.

**IN WITNESS WHEREOF**, CUSTOM CONTRACTING CORPORATION, has executed this Declaration this 13 day of November, 2020.

**CUSTOM CONTRACTING CORP**

  
By:

STATE OF UTAH )  
ss:  
County of Salt Lake )

The foregoing instrument was acknowledged before me on this 15 day of November, 2020 by John David Richards, of CUSTOM CONTRACTING CORPORATION

 Notary Public for Utah



**EXHIBIT A****(LEGAL DESCRIPTION)****BOUNDARY DESCRIPTION**

BEGINNING AT A POINT BEING NORTH 80° 26' 30" WEST 1,091.71 FEET ALONG THE SECTION LINE AND NORTH 57° 32' 30" WEST FROM THE SOUTH QUARTER CORNER OF SECTION 6, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 52° 31' 29" WEST 312.72 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE TURNING TO THE LEFT THROUGH A CENTRAL ANGLE OF 303.81°, HAVING A RADIUS OF 425.00 FEET (RADII POINT 0445.5617N 601055.5307E), AND WHENCE CHORD BEARS SOUTH 027° 07' 22" WEST 54.61 FEET, THENCE ALONG SAID CHORD CURVE 54.61 FEET TO THE BEGINNING OF A REVERSE CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH A CENTRAL ANGLE OF 251.55°, HAVING A RADII OF 425.00 FEET (RADII POINT 0445.5617N 601055.5307E), AND WHENCE CHORD BEARS SOUTH 351° 45' 27.47 FEET, THENCE ALONG THE ARC OF SAID CURVE 261.58 FEET, THENCE NORTH 33° 46' 04" WEST 348.22 FEET, THENCE NORTH 37° 01' 27" EAST 234.35 FEET, THENCE NORTH 37° 01' 27" EAST 121.65 FEET; THENCE NORTH 37° 01' 27" EAST 123.23 FEET; THENCE SOUTH 37° 01' 27" EAST 128.52 FEET; THENCE NORTH 30° 48' 15" EAST 129.59 FEET; THENCE NORTH 30° 48' 15" EAST 522.35 FEET; THENCE SOUTH 02° 31' 37" EAST 481.20 FEET; THENCE SOUTH 37° 28' 31" WEST 131.77 FEET; THENCE SOUTH 46° 36' 05" WEST 38.73 FEET; THENCE SOUTH 47° 28' 07" WEST 214.00 FEET; THENCE SOUTH 37° 28' 31" WEST 38.00 FEET; THENCE SOUTH 37° 28' 31" WEST 211.30 FEET; THENCE SOUTH 31° 16' 40" WEST 38.22 FEET; THENCE SOUTH 37° 28' 31" WEST 214.00 FEET; THENCE SOUTH 38° 17' 00" WEST 430.00 FEET; THENCE SOUTH 37° 28' 31" WEST 107.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 18.465 ACRES.

Including:

All Lots and Common Areas, MOJAVE MESA PHASE 1-A AMD & EXT (I), according to the official plat thereof recorded with the office of the Washington County Recorder, state of Utah.

Parcel Numbers: I-MOM-1-A-1 through I-MOM-1-A-6  
I-MOM-1-A-31 through I-MOM-1-A-38

All Lots and Common Area, MOJAVE MESA 1-B (I), according to the official plat thereof recorded with the office of the Washington County Recorder, state of Utah.

Parcel Numbers: I-MOM-1-B-7 through I-MOM-1-B-12  
I-MOM-1-B-39 through I-MOM-1-B-46

All Lots and Common Area, MOJAVE MESA 1-C (I), according to the official plat thereof recorded with the office of the Washington County Recorder, state of Utah.

Parcel Numbers: I-MOM-1-C-13 through I-MOM-1-C-18  
I-MOM-1-C-47 through I-MOM-1-C-54

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**MOJAVE MESA HOMEOWNERS ASSOCIATION**

ARTICLE 1 - DEFINITIONS .....	36
ARTICLE 2 - ELECTRONIC MEANS – NOTICE & VOTING .....	36
ARTICLE 3 - MEETINGS OF ASSOCIATION .....	37
ARTICLE 4 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE .....	40
ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS .....	42
ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD .....	44
ARTICLE 7 - OFFICERS AND THEIR DUTIES .....	45
ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS .....	46
ARTICLE 9 - RECORDS AND AUDITS .....	46
ARTICLE 10 - AMENDMENTS .....	48
ARTICLE 11 - MISCELLANEOUS .....	49

**ARTICLE 1 - DEFINITIONS**

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

**ARTICLE 2 – ELECTRONIC MEANS – NOTICE & VOTING**

2.1 Notices.

2.1.1 Association. All notices to the Association or the Board of Directors shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to Owners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by regular U.S. mail. The Board of Directors is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring Owners to furnish the Association with a current email address so long as such email addresses are not deemed a record of the Association and shall only be used by the Board of Directors for Association business.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board of Directors, or if no address has been designated, then to the Owner's Lot. Neither the Board nor its Agent(s) shall be responsible for locating the Owner if their mailing or email address has changed. Owners shall be responsible to notify the Association of all such changes. The Board may rely on the mailing address as reflected on the County Records if not provided with a different address for an Owner.

(c) If a Lot is jointly owned, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Lot shall be sufficient.

2.2 Affairs, Electronic Means. Except for the election of Directors, or as stated herein, any notice, transaction or action involving the business or affairs of the Association or the Board (whether or not expressly stated in any Articles or Sections of the Declaration or Bylaws), including but not limited to any and all notices, voting matters (whether by members or the Board) referred to in these Bylaws and the Declaration may be conducted by electronic means. The Association may accept an electronic vote, consent, written ballot, waiver, proxy appointment, proxy revocation or any other verified action taken through electronic means as the act of the Member if the Board does so in good faith and has no reason to believe it is not the act of the Member. Any such document or writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a member or by the Association.

### **ARTICLE 3 - MEETINGS OF ASSOCIATION**

3.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.

3.2 Annual Meetings. Each regular annual meeting of the members shall be held each

year on the day and at a time and place within the state of Utah selected by the Board.

3.3 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the President or two or a majority of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by members in good standing holding at least 25% of the voting rights of the Association. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.4 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the secretary or person authorized to call the meeting, in a fair and reasonable manner, unless oral notice is reasonable under the circumstances, at least ten (10) days before the time fixed for the meeting. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

3.5 Voting. Each Lot shall be allocated the voting rights set forth in Section 8.3 of the Declaration or one (1) vote in matters of the Association for each Lot owned.

3.6 Proxies and Written Ballots. A vote may be cast in person, by proxy or by written ballot. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Lot. Proxies may be turned in to a Board member or Agent up to the beginning of the voting portion of a meeting.

3.7 Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.

3.8 **Quorum of Owners.**

(a) At any regular annual meeting of the Association, the Members that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Members holding one-third (1/3) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

(b) The subsequent ratification of an Owner of the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting or vote of Members cannot be organized or achieved because of a lack of quorum, Members represented in person, by proxy, or by written ballot, holding twenty-five percent (25%) of the voting rights of all Members, shall constitute a quorum at an adjourned meeting, or subsequent Action by Written Ballot regarding the same issue, held or begun within 30 days, and the following shall apply. For a meeting, the Members who are present may adjourn the meeting, without further notice other than announcement at the meeting, to a time at least 48 hours from the time of the meeting at which a quorum was not present. For an Action by Written Ballot (whether or not conducted in conjunction with an annual meeting), the procedures and time frames in Section 2.12 below shall apply anew.

3.9 **Binding Vote.** Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

3.10 **Order of Business.** The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

3.11 **Meeting Procedure.** Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

3.12 **Action by Written Ballot in Lieu of a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted ("Action by Written Ballot"). A written ballot shall set forth

each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations.

Action by Written Ballot may also be used in connection with any annual, regular, or special Association meeting, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. Action by Written Ballot has the same effect as action taken at a meeting of Members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.13 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more written consents forms, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty-day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

## **ARTICLE 4 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE**

### **4.1 Number, Term and Qualifications.**

(a) Except for Section (b) below, the affairs of the Association shall be governed by a Board of Directors composed of either three (3) or five (5) Board members as elected by the Owners.

(b) During the Declarant (Builder) Control Period, the Board shall consist of four (4) Board members as appointed – two (2) from the Declarant and two (2) from the Builder, as set forth in Section 1.13 of the Declaration.

(c) After the Declarant and Builder Control Period, members of the Board shall serve for a term of two (2) years. The terms shall be staggered so all Board members are never elected in the same year.

(c) After the Declarant and Builder Control Period, all Board members must be an Owner or the spouse of an Owner of a Lot, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Lot, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

#### 4.2 Nomination

(a) Method of Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a Nominating Committee and/or nominations from the floor at a meeting. If one is established, the Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

(b) Nominating Committee. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board, and one or more members of the Association.

4.3 Election. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 Vacancies. After the Declarant Control Period, vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

#### 4.5 Removal of Board members

(a) After the Declarant Control Period, at any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board may declare the office of a member of the Board to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board or from more than 25% of the regular meetings held in any 12-month period. The vacancy shall be filled as provided in Section 3.2 above.

4.6 Compensation. No Board member shall receive compensation for any service he or she may render to the Association as a Board member. However, any Board member may be reimbursed for actual expenses incurred in the performance of his or her duties.

4.7 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting if all the Board members agree in writing to take a vote or an action without a meeting. The action being taken shall not require unanimous consent of the Board. Any action so taken shall have the same effect as though taken at a meeting of the Board members.

## ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS

### 5.1 Organizational Meeting.

(a) Location, Date and Time. The first meeting of a newly-elected Board (which does not include interim Board members during the Declarant Control Period) shall be held at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

(b) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is a member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Unless other rules of order are adopted by resolution of the Board:

(a) Meetings of the Board shall be conducted by the President; (b) A decision of the Board may not be challenged because the appropriate rules of order were not used; (c) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

5.5 Open Meetings; Executive Sessions.

(a) Open Meetings. After the Declarant Control Period and except as provided below, all meetings of the Board shall be open to Lot Owners. However, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

- (1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (2) Personnel matters, including salary negotiations and employee discipline;
- (3) The negotiation of contracts with third parties;
- (4) Collection of unpaid assessments; and
- (5) Other matters of a sensitive, private, or privileged nature at the discretion of the Board.

(c) Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Waiver of Notice. Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board, no notice to Board

members shall be required and any business may be transacted at the meeting.

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (i) to another Board member, or other person, who is present at the meeting; and (ii) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to: (a) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; (b) in the Board's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Board member or officer shall discharge the Board member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

**ARTICLE 7 - OFFICERS AND THEIR DUTIES****7.1 Designation and Qualification.**

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

(b) Qualifications. The president and vice-president shall be a member of the Board, but the other officers need not be Board members or Owners. Any Board member may be an officer of the Association.

(c) Multiple Offices. A person may simultaneously hold more than one office.

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

**7.2 Election and Vacancies.** The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

**7.3 Resignation.** Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

**7.4 Removal of Officers.** Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

**7.5 Compensation of Officers.** No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

**7.6 Duties of Officers.** Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the

Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

## **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS**

Each Board of Directors member, committee member and officer of the Association, in consideration of their services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member, committee member, or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

## **ARTICLE 9 - RECORDS AND AUDITS**

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah

Revised Nonprofit Corporation Act.

9.1 General Records.

(a) The Board and managing agent or manager, if any, shall keep records of the actions of the Board and managing agent or manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. The account shall designate the Lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.3 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all mortgagees of Lots who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and mortgagees of Lots.

9.4 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.5 below, all records of the Association shall be reasonably available for examination by an Owner and any mortgagee of a Lot pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.3 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.5 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.

(f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

## **ARTICLE 10 - AMENDMENTS**

These Bylaws may be amended with the approval of a majority of the Board once a quorum is established. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

Notwithstanding the foregoing, (1) the Declarant and Builder may unilaterally amend these Bylaws at any time until the Turnover Meeting, and (2), for so long as the Builder owns a single Lot in the Property, any and all amendments must receive the approval of the Declarant (as defined in 1.13 of the Declaration). Failure to receive such approval shall make the amendment null and void.

## ARTICLE 11 - MISCELLANEOUS

11.1 Utah HOA Registry. The Association shall register with the Utah Department of Commerce in the manner established by the department and in compliance with the Act (the "Homeowner Associations Registry").

11.2 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.3 Invalidity, Number, Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

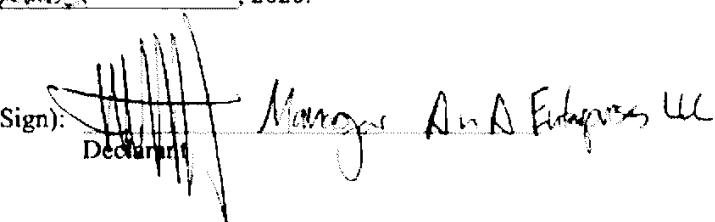
11.4 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

11.5 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by its duly authorized officers on this 11<sup>th</sup> day of November, 2020.

(Sign):

Declarant

A handwritten signature in black ink, appearing to read "Declarant" followed by a name, is written over a stylized, illegible signature.