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**AMENDED AND RESTATED COMMUNITY DECLARATION**

**FOR**  
**ENCANTO RESORT**  
**A PLANNED UNIT DEVELOPMENT**

**Washington County, Utah**

Prepared by:



Attn: Bruce C. Jenkins  
285 W. Tabernacle, Ste. 301  
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**AMENDED AND RESTATED COMMUNITY DECLARATION  
FOR  
ENCANTO RESORT  
A PLANNED UNIT DEVELOPMENT  
Washington County, Utah**

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This AMENDED AND RESTATED COMMUNITY DECLARATION for ENCANTO RESORT, A PLANNED UNIT DEVELOPMENT (“Community Declaration”) was approved by the affirmative vote of Members holding at least sixty-seven percent (67%) of the Total Votes of the Community Association, pursuant to Article 17, Section 17.2, of the Original Community Declaration (defined below), and amends and restates in its entirety and substitutes for the following:

- Community Declaration for Encanto Resort, a Planned Unit Development, recorded with the Washington County Recorder on March 22, 2016, as Document No. 20160009677 (“Original Community Declaration”);
- First Amendment to Community Declaration for Encanto Resort, a Planned Unit Development, recorded with the Washington County Recorder on April 9, 2019, as Document No. 20190012996; and
- any other amendments, supplements, or annexing documents to the covenants, conditions, and restrictions for Encanto Resort whether or not recorded with the Washington County Recorder.

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

**RECITALS**

A. Declarant held both legal and equitable title to certain real property located in Washington County, Utah, which is described in Exhibit A attached hereto and incorporated herein by this reference (the “Property”).

B. By the Original Community Declaration, Declarant desired and intended to develop a common scheme and planned community on the Property known as Encanto Resort, as shown on the Community Plat, for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of the Project.

C. The Project contains various Lots and Dwellings and may include without limitation, condominium units, patio or zero lot line homes, townhouses, duplexes, and single family or multifamily houses, open spaces, walkways, a clubhouse and pool and various other amenities and improvements.

D. The Project possesses great natural beauty which Declarant intended to preserve through use of a coordinated plan of development and the terms of this Community Declaration. The plan provided for comprehensive land planning, harmonious and appealing landscaping and improvements. It is assumed that each purchaser of property in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Community Declaration. The Project is not a cooperative.

E. It was and is desirable for the efficient management and preservation of the value and appearance of the Project to create and maintain a nonprofit corporation which is assigned the powers and delegated the duties of: managing certain aspects of the Project; maintaining and administering the Common Area; administering, collecting, and disbursing funds pursuant to the provisions regarding Assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. The Encanto Resort Community Association, Inc., a Utah nonprofit corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the foregoing powers and functions.

F. Each Owner shall receive fee title to his or her Lot and one (1) Membership per Lot in the Community Association as provided in this Community Declaration, the Articles, and the Bylaws.

G. The covenants, conditions, and restrictions contained in this Community Declaration and in the Exhibit attached hereto shall be enforceable covenants and equitable servitudes and shall run with the land.

NOW, THEREFORE, Declarant declared, covenanted, and agreed and the Community Association hereby declares, covenants, and agrees that each of the Recitals A through G is incorporated into and made a part of this Community Declaration for all purposes and further declares, covenants, and agrees as follows:

## ARTICLE 1

### DEFINITIONS

Unless the context clearly indicates otherwise, the following words, phrases, or terms used in this Community Declaration (including that portion hereof headed "Recitals") shall have the meanings set forth in this Article 1. (Certain terms not defined herein are defined elsewhere in this Community Declaration.) The definitions in this Community Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply.

- 1.1    "Annual Assessments" means the Assessments levied pursuant to Section 9.2.
- 1.2    "Articles" means the Articles of Incorporation of the Community Association, as amended from time to time.
- 1.3    "Assessable Property" means each Lot or Dwelling, except for Exempt Property.
- 1.4    "Assessment" means an Annual Assessment or Special Assessment, as applicable.
- 1.5    "Assessment Lien" means the lien created and imposed by Section 9.1.
- 1.6    "Reserved"
- 1.7    "Assessment Period" means the term set forth in Section 9.5.
- 1.8    "Board" means the Board of Directors of the Community Association.
- 1.9    "Bylaws" means the Bylaws of the Community Association, as amended from time to time.
- 1.10   "Common Area" means: (a) all land, and the Improvements situated thereon, within the Project which Declarant designated as "Common Area Ownership (HOA)" on the Community Plat or other Recorded Instrument, including "Limited Common Ownership"; (b) any real property or Improvements within the Project that the Community Association has the obligation to maintain, repair, or replace for the common benefit of the Owners; and (c) any portion of the Project which is owned by the Community Association for the benefit of the Owners. The Common Area may also include, but is not limited to, perimeter fencing or walls, multi-purpose recreational trails, the clubhouse and pool, open space, and related Improvements, private streets, sidewalks, landscaping, Project signage, street signage, Project lighting, and such other similar Improvements.
- 1.11   "Community Association" means THE ENCANTO RESORT COMMUNITY ASSOCIATION, INC., a Utah nonprofit corporation, and its successors and assigns, organized for the purposes set forth in this Community Declaration, the Articles, and the Bylaws.

1.12 “Community Declaration” means this Amended and Restated Community Declaration for Encanto Resort, a Planned Unit Development, as amended from time to time.

1.13 “Community Expenses” means expenditures made by or financial liabilities of the Community Association, together with any allocations to reserves as further described in Section 9.2.1.

1.14 “Community Plat” means that certain subdivision plat for the Project entitled “ENCANTO RESORT 4TH AMENDED” duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.15 “Community Rules” means the rules adopted by the Board pursuant to Section 7.5, as amended from time to time.

1.16 “Declarant” means GP IVINS HOME & LAND, L.C., a Utah limited liability company, or its respective successors, and any Person to whom it may expressly assign any or all of its rights under this Community Declaration (references herein to Declarant are for historical purposes and context).

1.17 “Declarant Affiliate” means any Person directly or indirectly controlling, controlled by, or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member, or controlling shareholder (references herein to Declarant Affiliate are for historical purposes and context).

1.18 “Reserved”

1.19 “Design Guidelines” means the written review standards, if any, promulgated by the Design Review Committee pursuant to this Community Declaration.

1.20 “Design Review Committee” means the design review committee created pursuant to this Community Declaration.

1.21 “Dwelling(s)” means a separate residential dwelling unit intended for independent ownership and residential use together with garages and/or other attached Improvements on the same Lot, including without limitation, duplex, patio, or zero lot line homes, as may be developed, used, and defined as provided in the Governing Documents. The term “Dwelling” as sometimes used herein contemplates that such Dwelling is owned, conveyed, or mortgaged as a separate dwelling of real property.

1.22 “Eligible Mortgagee” means and refer to a Mortgagee which has requested notice of certain matters from the Community Association in accordance with Section 14.1 of this Community Declaration.

1.23 “Exempt Property” means:

1.23.1 All land and Improvements owned by, or dedicated to and accepted by, the United States, the State of Utah, Washington County, or any other Municipal Authority having jurisdiction, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; and

1.23.2 All Common Area, except Limited Common Area.

1.24 "Governing Documents" means this Community Declaration, the Articles, the Bylaws, the Community Plat, the Community Rules, Board resolutions of the Community Association, the Design Guidelines, and any other written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the Property, as each document may be amended from time to time.

1.25 "Improvement(s)" means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any building, transient/overnight occupancy development, out building, structure, walkway, garage, road, driveway, parking area, screening wall, shed, covered patio, stairs, deck, fountain, pool, radio or television antenna or receiving dish, paving, curbing, landscaping, hedges, windbreak, planting, planted trees and shrubs, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, exterior lights, any excavation, fill, ditch, diversion, dam, retaining wall, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment.

1.26 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot, Dwelling, or Improvement (or part thereof), including a sublessee or an assignee of the lessee's or tenant's interest under a lease.

1.27 "Lot" means each area of real property in the Project shown as a separate parcel of land on the Community Plat, each of which is to be improved with Dwellings. If two (2) or more contiguous parcels of land are owned by the same Person, then they shall be considered one (1) Lot for the purposes of this Community Declaration. Each Lot is surrounded by Limited Common Areas which are typically appurtenant to a particular Lot as depicted on the Community Plat. The Maximum Gross Building Area, as referred to in the Original Community Declaration and as depicted on the Community Plat is synonymous with the definition of Lot. For simplicity, references to Maximum Gross Building Area have been deleted from this Declaration in favor of reference to a Lot.

1.28 "Limited Common Areas" shall mean a portion of the Common Areas allocated by this Community Declaration, or as may be shown on the Community Plat and identified therein as "Limited Common Ownership," for the exclusive use of one (1) or more, but fewer than all, of the Lots.

1.29 **“Member”** means any Person who is a member of the Community Association as provided in Article 7.

1.30 **“Membership”** means a membership in the Community Association and the rights granted to the Members, pursuant to Article 7, to participate in the Community Association.

1.31 **“Mortgage”** means any mortgage, deed of trust, or other document pledging any portion of a Lot or Dwelling or interest therein as security for the payment of a debt or obligation Recorded against such Lot or Dwelling, and a **“First Mortgage”** means any Mortgage which is not subject or subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.32 **“Mortgagee”** means a beneficiary of a Mortgage as well as a named Mortgagee, and **“First Mortgagee”** means such a beneficiary or mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.33 **“Municipal Authority”** means the applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including without limitation, the City of Ivins, Washington County, and the State of Utah.

1.34 **“Occupant”** means any Person other than an Owner who has actual use, possession, or control of a Lot, or any portion thereof or Improvement thereon, and shall include, without limitation, residents who reside in any Dwelling.

1.35 **“Owner”** means (a) the Person or Persons who individually or collectively own fee title to a Lot, Dwelling, or Improvement, and vendees under installment purchase contracts; and (b) any Lessee entitled to occupy all of a Lot, Dwelling, or Improvement or a portion thereof under a lease or sublease for an initial term of at least ten (10) years, in which case the Lessee, rather than the fee owner of the Lot, Dwelling, or Improvement, or portion thereof shall be deemed the Owner thereof for purposes of this Community Declaration during the term of said lease or sublease. “Owner” shall not include Persons who hold an interest in a Lot, Dwelling, or Improvement merely as security for the performance of an obligation.

1.36 **“Person”** means a natural person, corporation, business trust, estate trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.37 **“Project”** and/or **“Property”** means, refers to, and consists of the Lots and other parcels of real property situated in Washington County, Utah described in Exhibit A and the development, Dwellings, and Improvements to be completed thereon and subjected to this Community Declaration pursuant to Section 2.3 below.

1.38 **“Purchaser”** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.39 **“Record,” “Recording,” “Recorded,” and “Recordation”** means placing or having placed an instrument of public record in the official records of Washington County, Utah.

1.40 **“Special Assessment”** means an Assessment levied pursuant to Section 9.4.

1.41 **“Square Feet” or “Square Footage”** means with respect to any Lot the gross square feet constructed above finished grade of a Dwelling or other Improvement located on such Lot, as shown on the building plans, site plans, and other construction documents submitted to the Design Review Committee pursuant to Article 6, and as measured and calculated by the Community Association on a consistent basis. Square Foot shall mean the singular of Square Feet.

1.42 **“Total Votes of the Community Association”** means the total number of votes appertaining to all Lots, as described in Section 7.2 below.

## **ARTICLE 2 PROJECT OVERVIEW**

2.1 **Lot Entitlements.** The entitlements for Lots and Dwellings within the Project are established and defined in the Governing Documents.

2.2 **Mixed Use Development.** The Project was developed to allow for mixed uses, including, without limitation or obligation, residential uses consistent with the Governing Documents, as well as ancillary, complementary, or subsidiary uses such as (without limitation), natural open space, Common Areas, and the like.

2.3 **Property Subject to this Community Declaration.** All of the property within the Project shall be held, sold, and conveyed subject to this Community Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Community Declaration, each Person, for himself, herself, or itself, and his, her, or its heirs, personal representatives, successors, transferees, and assigns, binds himself, herself, or itself, and his, her, or its heirs, personal representatives, successors, transferees, and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Community Declaration. In addition, each such Person by so doing acknowledges that this Community Declaration sets forth a general scheme for the development and use of the Project and evidences his, her, or its intent that all the restrictions, conditions, covenants, rules, and regulations contained in this Community Declaration shall run with the land it encumbers and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Community Declaration shall be mutually beneficial and enforceable by the Community Association and all Owners.

2.4 **Reserved.**

2.5 **Community Association.** The Community Association shall maintain the Common Area and all Improvements thereon, in a safe, sanitary, and attractive condition. Such

maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, and garbage pickup at the clubhouse, and landscaping. The Owner of a Lot has the responsibility to keep the irrigation system (sprinkler, drip or other) in good condition and repair and will allow the Association to adjust the irrigation system timer to keep the landscape on the Lot adequately watered. The Lot Owner, and not the Association, shall be responsible for maintenance, repair and replacement of Improvements in the Limited Common Area appurtenant to the Owner's Lot, except the Association may, by Rule, assume for the common benefit of the Association Members and as a common expense of the Association, specific and limited maintenance, repair and replacement obligations in the Limited Common Area. The Community Association shall assess and collect fees from its Members, in accordance with the provisions hereof.

2.6 Incidents of Ownership. Every Owner of a Lot or Dwelling shall be a Member of the Community Association, and a nonexclusive easement for each Owner shall exist for use, enjoyment, ingress, and egress over the Common Area subject to such restrictions and limitations as are contained in the Governing Documents, including limitations related to Limited Common Areas, and subject to other reasonable regulation by the Community Association. Such interests shall be appurtenant to and inseparable from ownership of the Lot or Dwelling. Any sale, conveyance, hypothecation, encumbrance, or other transfer of a Lot or Dwelling shall automatically transfer these interests to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.7 Reserved.

2.8 Rental Community. All Owners, Lessees, and Occupants agree and acknowledge that a primary purpose of the Project is to provide overnight occupancy accommodations in support of resort and recreational related activities. Accordingly, all Owners, Lessees, and Occupants understand that there will be persons occupying the Dwellings within the Project as temporary, commercial overnight accommodations and nothing in this Community Declaration shall limit the rights of the Community Association or any other Owner to operate the Dwellings owned by it for transient rental purposes.

2.9 Description of Limited Common Areas. Limited Common Areas shall mean a portion of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, decks, balconies, foyers, storage closets, hot tubs, patios, attics, and other areas as indicated by this Community Declaration or the Community Plat to be for the exclusive use of one (1) or more but fewer than all of the Lots. The Limited Common Areas shall be those areas designated as such on the Community Plat or in this Community Declaration. The use and occupancy of designated Limited Common Areas shall be reserved to the Lots to which such Limited Common Area is adjacent, unless otherwise shown on the Community Plat or as specified in this Community Declaration. Owners may not reallocate Limited Common Areas between or among Lots in which they have an interest.

### ARTICLE 3 COMMUNITY ASSOCIATION'S RIGHTS AND DISCLAIMERS

3.1 Reservation of Right to Construct Dwellings and Improvements. Any Owner of a Lot, Dwelling, or Improvement shall have the right to submit plans for approval to the Design Review Committee for the development of a particular Dwelling or Improvement for his, her, or its Lot subject to the Design Guidelines.

3.2 Reserved.

3.3 Security. The Community Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. The Community Association shall not in any way be considered an insurer or guarantor of security within the Project. The Community Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, Occupants, Lessees, tenants, guests, and invitees of any Owner or Occupant, as applicable, acknowledge that the Community Association and its Board and the Design Review Committee do not represent or warrant that any fire protection system or burglar alarm system designated by or installed according to the Design Guidelines may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, Occupant, Lessee, tenant, guest or invitee of an Owner or Occupant, as applicable, acknowledges and understands that Declarant, the Community Association and its Board, and the Design Review Committee are not insurers and that each Owner, Occupant, Lessee, tenant, guest, and invitee assumes all risks for loss or damage to Persons, to Lots, Dwellings, Improvements, and to the contents of Dwellings and Improvements and further acknowledges that the Community Association and its Board and the Design Review Committee have made no representations or warranties nor has any Owner, Occupant, Lessee, tenant, guest, or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

3.4 Reserved.

3.5 Reserved.

3.6 Community Association's Exemption. No Design Review Committee approval shall be required for (a) any construction, installation, addition, alteration, repair, change, replacement, or other work by, or on behalf of, the Community Association; (b) normal maintenance of Exempt Property or previously approved Dwellings or Improvements; (c) rebuilding an Exempt Property or previously approved Dwelling or Improvement in accordance with its original design and dimensions; (d) changes to the interior of an Exempt Property or previously approved Dwelling or Improvement; (e) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

3.7 Transfer of Title to Common Areas. Declarant shall have the obligation to convey to the Community Association title to the Common Areas, free and clear of all liens

(other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) before the closing of the last sale of a Lot or Dwelling within the Project.

## ARTICLE 4

### PERMITTED USES AND RESTRICTIONS

4.1 Use Restrictions. Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of one (1) or more Dwellings in accordance with the Governing Documents. The Lots, Dwellings, Common Areas, Limited Common Areas, and Improvements, except as otherwise permitted in writing by the Community Association, shall be used in accordance with the restrictions outlined in the Governing Documents and as outlined below:

4.1.1 The Lots may be used only for the construction and occupancy of residential Dwellings and typical residential activities incidental thereto, such as fulltime residential homes, vacation second homes, the rental of Dwellings as overnight accommodations, the construction and use of a family swimming pool, together with any common recreational facilities or any other Common Areas or amenities. All property within the Project shall be used, improved, and devoted exclusively to residential and vacation use.

4.1.2 All Lots shall be used, improved, and devoted exclusively to detached residential Dwellings, which can include an attached casita. Unless otherwise permitted by the Community Association in writing, no structure whatsoever, other than one (1) private Dwelling, together with a private garage for cars, shall be erected, placed, or permitted to remain on any Lot. The entire Dwelling on a Lot may be rented from time to time by the Owner thereof, subject to the provisions of this Community Declaration and the other Governing Documents.

4.1.3 No Dwelling shall be used for or developed as a timeshare/fractional program ("Timeshare/Fractional Program"). For purposes of this Community Declaration, Timeshare/Fractional Program specifically means:

4.1.3.1 Any and all use and occupancy arrangements falling within the definition of "timeshare interests" under the Utah Timeshare and Camp Resort Act (Utah Code §§ 57-19-1, et seq.), but a determination that any use and occupancy arrangements do not constitute a "timeshare interest" under such Act shall not be determinative of whether such arrangements constitute a Timeshare/Fractional Program hereunder. It is intended that the definition of "Timeshare/Fractional Program" hereunder shall be broader than, and not limited by, the definition of "timeshare interest" in the Timeshare and Camp Resort Act. Timeshare/Fractional Programs may also include, without limitation, Dwellings:

4.1.3.1.1 used for the operation of a timesharing, fractional ownership, interval ownership, private residence, club, or similar program whereby the right to exclusive use of the Dwelling rotates among participants in the program, regardless of whether such program utilizes a

fixed or floating schedule, a first come-first served reservation system, or any other arrangement; or

4.1.3.1.2 used for the operation of a reservation or time-use system among co-Owners of a Dwelling, regardless of whether or not any co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating, if one (1) or more of the following conditions exist:

(a) the ownership interest in such Dwelling is marketed for sale to the public subject to such system; or

(b) the co-Owners are or were required as a condition of purchase of the ownership interest in such Dwelling to subject the interest to a pre-determined reservation or time-use system among co-Owners; or

4.1.3.1.3 in the marketing, offering, or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest, or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Dwelling, or involving the Dwelling and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system, and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

4.1.4 All Owners and Occupants hereby agree and acknowledge that a primary purpose of the Project is to provide overnight occupancy accommodations in support of resort recreational related activities. All Owners and Occupants understand that there may be persons occupying the Dwellings within the Project as temporary, commercial overnight accommodations and nothing in this Community Declaration shall limit the rights of the Community Association any other Owner to operate the Dwellings owned by it for transient rental purposes. Accordingly, based upon the primary purpose for which the Project was approved, each Owner hereby agrees and acknowledges that if he or she occupies his or her Dwelling within the Project as a fulltime residence, then such Dwelling is not eligible for the primary residential tax exemption allowed under Utah Code § 59-2-103(2), and said Dwelling shall be assessed at the secondary residential tax rate.

4.1.5 Lots and Dwellings shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner may conduct business activities within the Dwelling so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the activity conforms to all zoning requirements for the Project; (c) the activity does

not involve regular visitation of the Dwelling by clients, customers, suppliers, or other business invitees, or door-to-door solicitation of residents of the Project; and (d) the activity is consistent with the residential and vacation character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Nothing herein shall prohibit the nightly or other short-term or long-term rental of any Dwelling within the Project.

**4.2 Architectural Control.** All Dwellings and Improvements constructed within the Project shall comply with the Design Guidelines and no construction, reconstruction, installation, removal, addition, alteration, repair, change, devegetation, excavation, grading, planting, revegetation, or other work which in any way alters the appearance (including, but without limitation, the exterior color scheme) of any property or Lot within the Project, or any Dwellings or Improvements located thereon, shall be made or done without the prior written approval of the Design Review Committee. Any Owner or other Person desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Dwelling or Improvement which would alter the exterior appearance of his, her, or its Lot, Dwelling, or other portion of the Project, or any Improvements located thereon, shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement, or other work which such Owner or other Person desires to perform. The Design Review Committee shall review the Owner's written request according to the procedures outlined in the Governing Documents.

**4.3 Design Review Fee.** Declarant or the Community Association shall have the right to charge an Owner a reasonable fee for the Design Review Committee review of requests for approval of any construction, installation, alteration, addition, repair, change, replacement, or other work pursuant to the Governing Documents, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Community Association, shall be set at such reasonable level as the Community Association may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Committee in reviewing and evaluating any such request or application, and may include, if the Community Association deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect, engineer, or attorney.

**4.4 Municipal Authority Approval.** The approval required of the Design Review Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation, or under any Recorded instrument. The Design Review Committee may condition its approval of any application, plans, or other items submitted to it on delivery to the Design Review Committee of evidence satisfactory to the Design Review Committee that the Owner or other Person seeking its approval has also made appropriate application for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Committee shall cooperate reasonably with any other approving authorities or entities,

provided, however, that the Design Review Committee shall not be bound by any approvals, permits, or other decisions of any other such approving authority or entity.

4.5 Required Approvals for Further Property Restrictions. All proposed site plans and subdivision plats for any Lot, Dwelling, or Improvement, or any portion thereof, must be approved in writing by the Design Review Committee prior to Recordation thereof or commencement of construction on the applicable Dwelling or Improvement. In addition, the Property is subject to the following approvals:

4.5.1 No Lot or Dwelling, or portion thereof, shall be further subdivided and no portion less than all of such Lot or Dwelling, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Design Review Committee. This provision is not intended to prohibit any Owner from renting his or her Dwelling as temporary overnight accommodations, subject to any Community Rules governing such rental activities.

4.5.2 No site plan, subdivision plat, condominium plat, condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances, or use permits shall be Recorded or submitted to the Municipal Authority unless the same has first been approved in writing by the Design Review Committee; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Committee hereunder unless such changes or modifications have first been approved by the Design Review Committee in writing.

#### 4.6 Maintenance Obligations.

4.6.1 Owners' Obligation to Maintain Dwellings and Improvements. Except as provided in the following paragraph or elsewhere in this Declaration and except in situations where the Association has, by Rule, assumed for the common benefit of the Association Members and as a common expense of the Association, specific and limited maintenance, repair and replacement obligations in the Limited Common Area, Owners are responsible for all structures and Improvements on the Owner's Lot, interior and exterior, and any appurtenant Limited Common Areas so as not to detract from the appearance of the Property. Owners are responsible for the cost of repair and maintenance of walls between parcels to be shared equally by adjoining Lot Owners. Owners shall be responsible for the maintenance and repair of driveways, sidewalks, and sealing exterior concrete surfaces. Damage to structures on an Owner's Lot is to be promptly repaired by the Owner. Each Lot Owner shall be responsible for all utilities individually billed or metered to the Owner's Lot and shall be responsible for all components of the utility systems. Specifically, exclusive use of water/sewer lines, electric lines, and other or similar utility lines and apparatus are the sole responsibility of the Owner of the Lot to which they serve. In the event that Open Space (Common Area or Limited Common Area) is disturbed in order to service or repair any utilities or otherwise, it is the responsibility of the Owner to restore the Open Space (Common Area or Limited Common Area) to the previous condition. The Owner of a Lot has the responsibility to keep the irrigation system (sprinkler,

drip, or other) in good condition and repair and will allow the Association to adjust the irrigation system timer to keep the landscape on the Lot adequately watered.

**4.6.2 Community Association's Obligation for Maintenance of Lots.** The Association is solely responsible for all Common Areas. Any damages caused to any Common Areas by an Owner, or the Owner's tenants, invitees, or guests shall be repaired promptly at the cost of the Owner. The Association may, from time to time, budget specific exterior maintenance items to be conducted by the Association to ensure uniformity and consistency. Subject to the foregoing paragraph and Section 2.5, maintenance in the Limited Common Areas includes basic rodent control, irrigation maintenance, lawn care, and exterior plant replacement as needed, unless caused by Owner negligence (which shall include the failure to report required maintenance or irrigation adjustment). Plant replacements shall be like-in-kind and adapted to deal with shallow soils and scant water. The Association shall not be responsible for replacement of a plant if the cost exceeds One Hundred Dollars (\$100.00) per plant. The Board reserves the right to adjust the cost per plant threshold and may adopt an "Approved Plants List" at any time. Board approval shall be required for plant replacements not currently found in the Property. If in the opinion of the Board an Owner fails to perform the maintenance required of the Owner, the Association, upon advance notice to the Owner and opportunity to be heard, may cause the maintenance to be performed and assess the costs thereof as an assessment against the Owner and the Lot.

**4.7 Responsibility for Common Area Damage.** The cost of repair or replacement of any portion of the Common Area resulting from the willful or negligent act of an Owner, Occupant, Lessee, tenant, family, guest, or invitee shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Community Association. The Community Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

**4.8 Variances.** Subject to the provisions of the Design Guidelines, the Design Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Community Declaration if the Design Review Committee determines, in its discretion: (a) either: (i) that a restriction would create an unreasonable hardship or burden on an Owner, or (ii) that a change of circumstances since the date this Community Declaration is Recorded has rendered such restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse affect on the other Owners of Lots within the Project and is consistent with the high quality of life intended for Owners within the Project.

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

**4.10 Signs and Holiday Decorations.** No sign, poster, display, banner, ribbon, streamer, billboard or other advertising device or accessory of any kind shall be displayed to the view of

the public or Owners on any portions of the Project, except for Religious Signs, Holiday Signs, Political Signs, or For-Sale Signs as specifically provided for below:

#### 4.10.1 Religious and Holiday Signs.

4.10.1.1 A "Holiday Sign" shall mean a sign, symbol, or decoration reasonably celebrating a legal holiday listed in Utah Code § 63G-1-301(1)(a).

4.10.1.2 A "Religious Sign" shall mean a sign, symbol, or decoration reasonably celebrating religion.

4.10.1.3 The Association may not abridge the rights of a Lot Owner to display a religious or holiday sign, symbol, or decoration: (a) inside a Dwelling on a Lot; or (b) outside a Dwelling on: (i) a Lot; (ii) the exterior of the Dwelling, unless the Association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the exterior; or (iii) the front yard of the Dwelling, unless the Association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the yard.

4.10.1.4 Pursuant to Utah Code § 57-8a-218(5), a "Religious Sign" or "Holiday Sign" shall be permitted inside a Dwelling or outside a Dwelling on a Lot, provided that the sign complies with the following time, place and, manner regulations:

(a) The Religious Sign or Holiday Sign must be within five (5) feet of the outside wall of the Dwelling and within fifteen (15) feet of the front door of the Dwelling;

(b) The Religious Sign or Holiday Sign must be no larger than twenty-four (24) inches by eighteen (18) inches;

(c) No stickers or attachments may be attached to or placed on the Holiday Sign or Religious Sign;

(d) The Religious Sign or Holiday Sign must not include any offensive language or images, as determined by the Board;

(e) The Religious Sign or Holiday Sign must be limited in number to two (2) per Lot;

(f) The Holiday Sign must be installed no sooner than thirty (30) days before the date of the holiday and must be removed before ten (10) days after the holiday;

ii. If the Association has an ownership interest in the exterior of the Dwelling or a maintenance, repair, or replacement obligation for the exterior of, the Association may prohibit Religious Signs or Holiday Signs on the exterior of the Dwelling;

iii. If the Association has an ownership interest in the yard or a maintenance, repair, or replacement obligation for the yard, the association may prohibit Religious Signs or Holiday Signs in the yard;

iv. The Religious Sign or Holiday Sign must comply with other reasonable design criteria, as may be established, from time to time, by the Association's Board or the DRC.

#### 4.10.2 Political Signs.

4.10.2.1 Pursuant to Utah Code § 17-20a-103(b), a “Political Sign” shall mean a sign that advocates the election or defeat of a candidate for public office or the approval or defeat of a ballot proposition. No other sign shall be deemed a Political Sign.

4.10.2.2 The Association may not prohibit a Lot Owner from displaying a political sign: (a) inside a Dwelling on a Lot; or (b) outside a Dwelling on: (i) a Lot; (ii) the exterior of the Dwelling, regardless of whether the Association has an ownership interest in the exterior; or (iii) the front yard of the Dwelling, regardless of whether the Association has an ownership interest in the yard.

4.10.2.3 The Association may not regulate the content of a political sign.

4.10.2.4 Notwithstanding Subsection 4.10.2.2 above, the Association may reasonably regulate the time, place, and manner of posting a political sign.

4.10.2.5 The Association’s design criteria may not establish design criteria for a political sign.

4.10.2.6 Pursuant to Utah Code § 57-8a-218(4), a Political Sign shall be permitted inside a Dwelling or outside a Dwelling on a Lot, provided that the sign complies with the following time, place, and manner regulations:

(a) The Political Sign must be within five (5) feet of the outside wall of the Dwelling and within fifteen (15) feet of the front door of the Dwelling;

(b) The Political Sign must be no larger than twenty-four (24) inches by eighteen (18) inches;

(c) No stickers or attachments may be attached to or placed on the Political Sign;

(d) The Political Sign must be limited in number to two (2) per lot;

(e) The Political Sign must be installed no sooner than October 1st of the year and removed before November 14th of the year;

(f) Pursuant to Utah Code § 57-8a-218(4)(d), the Association’s may not establish design criteria for a Political Sign.

#### 4.10.3 For-Sale Signs.

4.10.3.1 The Association may not prohibit a Lot Owner from displaying a for-sale sign: (a) inside a Dwelling on a Lot; or (b) outside a Dwelling on: (i) a Lot; (ii) the exterior of the Dwelling, regardless of whether the Association has an ownership interest in the exterior; or (iii) the front yard of the Dwelling, regardless of whether the Association has an ownership interest in the yard.

4.10.3.2 Notwithstanding Subsection 4.10.3.1, the Association may reasonably regulate the time, place, and manner of posting a for-sale sign.

4.10.3.3 Pursuant to Utah Code § 57-8a-218(5), a “For-Sale Sign” shall be permitted inside a Dwelling or outside a Dwelling on a Lot, provided that the sign complies with the following time, place, and manner regulations:

- (a) The For-Sale Sign must be within five (5) feet of the outside wall of the Dwelling and within fifteen (15) feet of the front door of the Dwelling;
- (b) The For-Sale Sign must be no larger than twenty-four (24) inches by eighteen (18) inches;
- (c) No stickers or attachments may be attached to or placed on the For-Sale Sign;
- (d) The For-Sale Sign must not include any offensive language or images, as determined by the Board;
- (e) The For-Sale Sign must be limited in number to one (1) per lot;
- (f) The For-Sale Sign must not include any realtor information, aside from a phone number;
- (g) Other reasonable design criteria, as may be established, from time to time, by the Association's Board or the DRC.

Signs not complying with these regulations may be removed by the Association without notice. The Association shall not be liable for any loss of any type associated with the removal of such non-complaint signs.

4.11 Internal Accessory Dwelling Units. For an internal accessory dwelling unit ("IADU") approved by the local governmental authority pursuant to Utah Code §§ 10-9a-530 and 17-27a-526, the Owner shall provide to the Community Association, upon request and as a condition to maintain an IADU within the existing footprint of the Owner's Dwelling, the following information:

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

4.12 Water-Efficient Landscaping Rules. The Board shall adopt rules supporting water-efficient landscaping, including allowance for low water use on lawns during drought conditions, and may not prohibit or restrict the conversion of a grass park strip to water-efficient landscaping.

4.13 Electronic Vehicle Charging. A Lot Owner may install a Charging System, as defined in Utah Code § 57-8a-801(1), in a garage; a parking space on the Lot Owner's Lot; a parking space used for the parking or storage of a vehicle; or a Limited Common Area parking space designated for the Lot Owner's exclusive use, provided that the Lot Owner first complies with the following requirements:

4.13.1 The Lot Owner must submit the Association's approved application to the DRC and receive written approval of the application for the installation of the Charging System;

4.13.2 The Lot Owner must hire a general electrical contractor, as defined in Utah Code § 57-8a-801(2) or residential electrical contractor, as defined in Utah Code § 57-8a-801(3), to install the Charging System;

4.13.3 If the Charging System is installed in a Limited Common Area, the Lot Owner must provide reimbursement to the Association for the actual cost of the increase in the Association's insurance premium attributable to the installation or use of the Charging System;

4.13.4 The Charging System must comply with the Association's design criteria governing the dimensions, placement, or external appearance of the Charging System, including, but not limited to:

- (a) Construction of a screening structure that matches or complements the colors and materials used on the Dwelling on the Lot, as determined by the DRC;
- (b) The Charging System must be placed inside the screening structure and installed as close to the Dwelling as is reasonably possible;
- (c) The Charging System may not be any taller than seven (7) feet, wider than two (2) feet, or deeper than two (2) feet;
- (d) The Charging System must comply with all applicable building codes;
- (e) The Lot Owner must pay all costs associated with installation, metering, and use of the Charging System, including the cost of electricity associated with the Charging System and any damage to Common Area, or an area subject to the exclusive use of another Lot Owner, that results from the installation, use, maintenance, repair, removal, or replacement of the Charging System;
- (f) The Lot Owner must deposit a bond of Three Thousand Dollars (\$3,000.00) to cover the cost of removing the Charging System and to restore the premises to the condition before installation of the Charging System in the event that the Lot Owner transfers ownership of the Owner's Lot. The Lot Owner may have the Charging System removed independently and the bond shall be released back to the Lot Owner. If the Lot Owner fails to have the Charging System removed or the removal is deemed insufficient by the DRC, the actual cost of removal and restoration shall be deducted from the bond before the remainder is released back to the owner.

A Lot Owner who installs a Charging System shall disclose to a prospective buyer of the Lot: (a) the existence of the charging station and (b) the Lot Owner's related responsibilities under this Section.

Unless the Lot Owner and the Association otherwise agree: (a) a charging station installed under this Section is the personal property of the Lot Owner of the Lot with which the charging station is associated; and (b) a Lot Owner who installs a charging station shall, before transferring ownership of the Owner's Lot, unless the prospective buyer of the Lot accepts ownership and all rights and responsibilities that apply to the charging station under this Section: (i) remove the charging station; and (ii) restore the premises to the condition before installation of the charging station.

4.14 Solar Energy Systems. The provisions of §§ 57-8a-701 through -703 of the Act allowing solar energy systems under certain conditions, do not apply to (a) any express prohibition or an express restriction on a Lot Owner's installation of a solar energy system set forth in a declaration of this Community Association recorded before January 1, 2017, or created by official Community Association action taken before January 1, 2017, and (b) during the "period of administrative control" as defined in § 57-8a-102(19) of the Act. To the extent this Community Association did not have such restrictions in place prior to January 1, 2017, then any application to the Community Association for a solar energy system must comply with the requirements and limitations set forth in § 57-8a-701 through -703 of the Act. As used in this Section, the term "solar energy system" is as defined in § 57-8a-102(22) of the Act.

4.15 Activities in Dwellings and Backyards.

4.15.1 The Community Association may not interfere with a reasonable activity of an Owner within the confines of a Dwelling or Lot, including backyard landscaping or amenities, to the extent that the activity is in compliance with local laws and ordinances, including nuisance laws and ordinances.

4.15.2 However, any activity of an Owner within the confines of a Dwelling or Lot, including backyard landscaping or amenities, is prohibited where the activity: (a) is not normally associated with a project restricted to residential use; or (b) (i) creates monetary costs for the Community Association or other Lot Owners; (ii) creates a danger to the health or safety of occupants of other Lots; (iii) generates excessive noise or traffic; (iv) creates unsightly conditions visible from outside the Dwelling; (v) creates an unreasonable source of annoyance to persons outside the Lot; or (vi) if there are attached Dwellings, creates the potential for smoke to enter another Lot Owner's Dwelling, the Common Areas, or Limited Common Areas.

4.15.3 Unless prohibited by law, the Community Association may also limit the activities described in Subsection 4.15.2 above that affect the use of or behavior inside the Dwelling.

4.16 Limitation on Use of Common Area. There shall be no obstructions of, or anything kept in the Common Areas by the Owners, residents, or their tenants, guests, or invitees without the prior written consent of the Board. The Board may adopt Community Rules to prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots and Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board. The Board, by rule, may restrict a sex offender, as defined in Utah Code § 77-27-21.7 from accessing a protected area that is maintained, operated, or owned by the Association, including the pool area and clubhouse, subject to the exceptions described in § 77-27-21.7(3).

4.17 Limitation on Use of Limited Common Area. There shall be no obstruction or limitation on access for Community Association maintenance. The Board may adopt Community

Rules to prohibit or limit the use of the Limited Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots and Common Areas. Pools (permanent or temporary), hot tubs, trampolines, bounce houses, playground equipment, and other attractive nuisances are prohibited in the Common Areas and Limited Common Areas. BBQs, built in fire pits, golf putting greens, and patios may be allowed with Design Review Committee approval.

4.18 **Illegal Activity**. Nothing shall be done or kept in any Dwelling or in the Common or Limited Common Areas or any part thereof which would result in cancellation of the insurance of the Project or any part thereof, nor shall anything be done or kept in any Dwelling which would increase the rate of insurance on the Project or any part thereof over what the Community Association but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Dwelling or in the Common or Limited Common Areas or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common or Limited Common Areas or any part thereof shall be committed by any Owner or guest, tenant, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Community Association and other Owners harmless against all loss resulting from any such damage or waste caused by the Owner or the Owner's guests, tenants, licensees, or invitees.

## **ARTICLE 5 RESERVED**

## **ARTICLE 6 EASEMENTS**

### **6.1 Owners' Easements of Enjoyment.**

6.1.1 **Common Area Easements**. Each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to, and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, Dwelling, and Improvement, subject to the provisions of the Governing Documents including, without limitation, the following:

6.1.1.1 Except as otherwise provided in this Community Declaration, no dedication, transfer, mortgage, or encumbrance of all or any portion of the Common Area shall be effective unless approved by Owners representing two-thirds (2/3) of the Total Votes of the Community Association. Notwithstanding the preceding sentence or any other provision of this Community Declaration to the contrary, the Community Association shall have the right, without the consent of the Owners or any other Person, to dedicate portions of the Common Area to the public, or grant easements over, under, or through portions of the Common Area to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public, or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or

requested by any Municipal Authority, or by a public, quasi-public, or private utility company, in connection with or at the time of the development of portions of the Property.

6.1.1.2 The Community Association shall have the right to regulate the use of the Common Area through the Community Rules and to prohibit access to such portions of the Common Area, such as landscaped rights-of-ways, not intended for use by the Owners, Lessees, or other Occupants.

6.1.1.3 The Community Association shall have the right to grant easements or licenses to other Persons for the construction of Improvements on the Common Area, and the Community Association shall have the right to grant ingress and egress easements over the streets and roads in the Project to Persons who are not Members of the Community Association.

6.1.2 Lessee Access Rights. If a Dwelling or Improvement is leased or rented by its Owner, the Lessee of such Dwelling or Improvements shall have the right to use the Common Area during the term of the lease, and the Owner of such Dwelling shall have no right to use the Common Area until the termination or expiration of such lease.

6.2 Utility Easement. There is hereby created an easement upon, across, over, and under the Common Area, Lots, and other property for reasonable ingress, egress, installation, replacement, repair, or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area, Lots, and other property but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area, Lots, and other property except as initially designed, approved and/or constructed by Declarant or as approved by the Board (and, in the case of a Dwelling or Improvement, by the Owner of such Dwelling or Improvement). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Community Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

6.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through, and across such private streets, driveways, and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots, Dwellings, or Improvements and their guests, families, lessees, tenants, and invitees. There is also hereby created an easement upon, across, and over the Common Areas and all private roadways, private driveways, and private parking areas within the Project for vehicular and pedestrian ingress and egress, and for police, fire, medical, and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all

easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Washington County or any other municipal body or agency having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical, and other emergency vehicles and personnel).

6.4 Reserved.

6.5 Easement in Favor of Community Association. The Lots are hereby made subject to the following easements in favor of the Community Association and its directors, officers, agents, employees, and independent contractors:

6.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

6.5.2 For inspection, maintenance, repair, and replacement of portions of the Common Area accessible only from such Lots or Dwellings;

6.5.3 For correction of emergency conditions on one (1) or more Lots, Dwellings, or Improvements on portions of the Common Area accessible only from such Lots, Dwellings, or Improvements;

6.5.4 For the purpose of enabling the Community Association, the Board, the Design Review Committee, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers, and duties under the Governing Documents; and

6.5.5 For inspection during reasonable hours of the Lots, Dwellings, and Improvements in order to verify that the Owners and Occupants, and their guests, tenants, and invitees, are complying with the provisions of the Governing Documents.

**ARTICLE 7**  
**THE COMMUNITY ASSOCIATION; ORGANIZATION;**  
**COMMUNITY ASSOCIATION MEMBERSHIP; AND VOTING RIGHTS**

7.1 Formation of Association; Membership in the Community Association. The Community Association is a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in this Community Declaration and the other Governing Documents. Every Owner of a Lot or Dwelling which is Assessable Property shall be a Member of the Community Association.

7.2 Votes in the Community Association. All Owners of Lots shall be entitled to one (1) vote for each Lot owned. In the event more than one (1) Owner owns any Lot then all such Persons shall be Members of the Community Association.

7.3 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The votes for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one (1) Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she, or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted.

7.4 Governing Board and Officers. The affairs of the Community Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Community Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Community Association and the Common Area. The Board shall determine the compensation to be paid to any such manager.

7.5 Community Rules. The Board may, from time to time, and subject to the provisions of this Community Declaration, adopt, amend, and repeal rules and regulations pertaining to: (a) the management, operation, and use of the Common Area including, but not limited to, any recreational facilities or other Improvements situated upon the Common Area; (b) traffic and parking restrictions including speed limits on private streets within the Project; (c) minimum standards for any maintenance of the Common Area, Limited Common Area, Lots, Dwellings, and Improvements within the Project; or (d) any other subject within the jurisdiction of the Community Association. In the event of any conflict or inconsistency between the provisions of this Community Declaration and the Community Rules, the provisions of this Community Declaration shall prevail.

7.6 Personal Liability. No member of the Board or any other committee of the Community Association, no officer of the Community Association, and no manager or other employee of the Community Association shall be personally liable to any Member, or to any other Person including the Community Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Community Association, the Board or any member thereof, the manager, any representative or employee of the Community Association, any officer of the Community Association or any member of any other committee of the Community Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

7.7 Express Rights. Except as otherwise limited herein, the Board shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by Utah law, this Community Declaration, and the Bylaws, including but not limited to the following:

7.7.1 To make and enforce the Community Rules and all other rules and regulations covering the operation and maintenance of the Project.

7.7.2 To maintain, repair, replace, restore, operate, and manage the Common Areas and all property that may be acquired by the Community Association, to appoint a manager in regard to such activities, and to establish an adequate reserve fund for repair, replacement, and restoration thereof.

7.7.3 To determine and pay the Community Expenses.

7.7.4 To assess and collect the proportionate share of Community Expenses from the Owners.

7.7.5 To enter into contracts, deeds, leases, and/or other written instruments and documents and authorize the execution and delivery thereof by the appropriate officers.

7.7.6 To open bank accounts and make other decisions regarding the investment of Community Association funds on behalf of the Community Association and to designate signatories therefor.

7.7.7 To purchase, hold, sell, convey, mortgage, or lease any real property in the name of the Community Association or its designee; provided, portions of the Common Areas may only be conveyed or subjected to a security interest by the Community Association if Members entitled to cast at least a majority of the Total Votes of the Community Association agree to such action by ratification of an agreement.

7.7.8 To bring, prosecute, and settle litigation for itself, the Community Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Community Association, or the Project in excess of Five Hundred Thousand Dollars (\$500,000.00) without the prior approval of a majority of the Total Votes of the Community Association at a meeting or by written ballot distributed to Members by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Community Association's insurance carrier and which in either case results in no actual liability of funds of the Community Association in excess of Five Hundred Thousand Dollars (\$500,000.00) shall not require Community Association approval.

7.7.9 To own, purchase, lease, hold, sell, or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Community Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

7.7.10 To keep adequate books and records and implement the policies and procedures for the inspection of books and records of the Project by Owners in accordance with the terms of the Bylaws.

7.7.11 To prepare, adopt, amend, and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

7.7.12 To obtain insurance for the Community Association with respect to the Project, as well as worker's compensation insurance.

7.7.13 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Community Declaration.

7.7.14 To pledge Assessments as security for certain contractual obligations and liabilities.

7.7.15 The Board may delegate to the manager via a management agreement all of the foregoing powers, duties, and responsibilities referred to in this Community Declaration except the final determination of estimated Community Expenses, annual budgets and Assessments based thereon; the promulgation of rules and regulations; the power to enter into any contract involving more than Fifty Thousand Dollars (\$50,000 .00) for any one (1) unbudgeted expense in any one (1) fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage, or lease any portion of the Project in the name of the Community Association or the authority to bring, prosecute, and settle litigation.

7.8 Implied Rights. The Community Association may exercise any expressed or implied right or privilege given to the Community Association expressly by the Governing Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege.

#### 7.9 Bulk Service Agreements.

7.9.1 The Board, acting on behalf of the Community Association, shall have the right, power, and authority to enter into one (1) or more Bulk Service Agreements with one (1) or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s), and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Dwellings, or both within the Property, or within one (1) or more portions thereof, cable television, or security services, any concierge or other personal services, or similar or related products or services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

7.9.2 If all Lots and Dwellings within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Community Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her, or its proportionate share of the Community Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly) (provided that such "separate billing" may be made as one (1) or more separate line items on billings or invoices from the Community Association to the affected Owner(s) for Assessments or other charges). If not all Lots and Dwellings within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

7.9.3 Each Owner, by becoming the Owner of a Lot or Dwelling, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her, or it (or his, her, or its Lot or Dwelling) by the Board pursuant to this Section and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Dwellings against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including, but not limited to, reasonable attorney fees incurred by the Community Association in collecting or attempting to collect delinquent amounts, shall be secured by the Assessment Lien established by this Community Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Dwelling at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one (1) or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by, or under common control with the Owner transferring title).

7.9.4 No Owner of a Lot or Dwelling covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Dwelling under this Section, whether on the basis that such Owner does not use, accept, or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Dwelling or other Improvement has been completed.

7.9.5 "Bulk Provider" means a private, public, quasi-public utility, or other company which provides, or proposes to provide, cable television, community satellite television, high speed internet, security monitoring, other electronic entertainment, information, communication, or security services, or concierge or other personal services, to Owners, Occupants, Dwellings, Lots, or within one (1) or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

7.9.6 "Bulk Service Agreement" means an agreement between the Community Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed internet, security monitoring, electronic entertainment, information, communication, or security services, concierge, or other personal services, or similar or related products or services to Owners, Occupants, Dwellings, and Lots or within one (1) or more portions thereof.

7.9.7 The Board shall not, without the approval of Members holding at least fifty-one percent (51%) of the total votes of the Community Association represented in person or by proxy at an annual or special meeting of the Members of the Community Association, enter into a Bulk Service Agreement which imposes on the Community Association or its Members any obligation to pay the direct costs of construction of any cables, lines, or other facilities or equipment for any cable television, community satellite television, high speed internet, security monitoring, or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or requiring approval by the Members of, any Bulk Service Agreement which imposes on the Community Association or its Members installation, connection, service charge, or similar charges or fees which do not exceed those generally prevailing at the time within the greater Washington County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

7.10 Transfer of Community Association Membership. The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure, or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser shall notify the Community Association of his, her, or its purchase of a Lot.

## ARTICLE 8 DESIGN REVIEW COMMITTEE

8.1 Purpose. Prior to any review or approval by the Municipal Authority, the Design Review Committee shall be the first to review, study, and either approve, reject, or request resubmittal of proposed developments and improvements to a Lot, Dwelling, or Improvement, all in compliance with this Community Declaration and as further set forth in the rules and regulations of the Design Review Committee and the Design Guidelines.

8.2 Membership. The Design Review Committee shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure

of, the Board. In the event no such Design Review Committee is formed, the duties of the Committee shall be carried out by the Board.

**8.3 Organization and Operation of the Design Review Committee.**

**8.3.1 Term.** The term of office of each member of the Design Review Committee shall be three (3) years, commencing January 1 of each year, and continuing until his or her successor is appointed, which terms shall be staggered as determined by the Board. Should a Design Review Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 8.2 above. The Board may remove any member of the Design Review Committee at any time for any cause without notice.

**8.3.2 Chairperson.** The Board shall appoint the Design Review Committee and the chairperson shall be elected annually from among the members of the Design Review Committee by majority vote of said members.

**8.3.3 Operations.** The chairperson shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Design Review Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or if the absence is temporary, a temporary successor.

**8.3.4 Voting.** The affirmative vote of a majority of the members of the Design Review Committee shall govern its actions and be the act of the Design Review Committee. A quorum shall consist of a majority of the members.

**8.3.5 Expert Consultation.** The Design Review Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

**8.4 Expenses.** All expenses of the Design Review Committee shall be paid by the Community Association, subject to the Community Association's right to charge an Owner a reasonable design review fee to defray such expenses as provided for in Section 4.3 above.

**8.5 Design Guidelines and Rules.** The Design Review Committee shall adopt, establish, and publish from time to time the Design Guidelines. The Design Guidelines shall define and describe the design standards for the Project and the various uses within the Project. The Design Guidelines may be modified or amended from time to time by the Design Review Committee. The Design Review Committee, in its sole discretion, may excuse compliance with such Design Guidelines as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to obtaining final approval of any Lots, Dwellings, or Improvements from the Design Review Committee and prior to commencing construction. The Design Guidelines shall not be subject to modification or amendment by the Members. The Design Guidelines shall be established solely by the Design Review Committee.

8.6 Procedures. As part of the Design Guidelines, the Design Review Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Bylaws.

8.7 Limitation of Liability. The Design Review Committee shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Design Review Committee, nor any individual Design Review Committee member, shall be liable to any person for any official act of the Design Review Committee in connection with submitted plans and specifications, except to the extent the Design Review Committee or any individual Design Review Committee member acted with malice. Approval by the Design Review Committee does not necessarily assure approval by the appropriate Municipal Authority. Notwithstanding that the Design Review Committee has approved plans and specifications, neither the Design Review Committee nor any of its members shall be responsible or liable to any Owner or other contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Dwelling or Improvement. Neither the Board, the Design Review Committee, nor any agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Committee shall be defended and indemnified by the Community Association in any such suit or proceeding which may arise by reason of the Design Review Committee's decision. The Community Association, however, shall not be obligated to indemnify any member of the Design Review Committee to the extent any such member of the Design Review Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the Design Review Committee, unless and then only to the extent that an arbitrator or the court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such arbitrator or court shall deem proper.

## ARTICLE 9 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

9.1 Creation of Lien and Personal Obligation of Assessments. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments to the Community Association in accordance with this Community Declaration and the Bylaws. All Assessments shall be established and collected as provided in this Community Declaration. The Assessments, together with interest, late charges, and all costs, including but not limited to reasonable attorney fees, incurred by the Community Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorney fees, incurred by the Community Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal

obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one (1) or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by, or under common control with the Owner transferring title), but the Assessment Lien created by this Community Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same is fully paid.

**9.2 Annual Assessments.** In order to provide for the operation and management of the Community Association and to provide funds for the Community Association to pay all Community Expenses and to perform its duties and obligations under the Governing Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance, and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot which is Assessable Property. The Annual Assessments shall commence on the first day of the month following the closing of the sale of the Lot in the Project. Annual Assessments shall be computed and assessed as follows:

**9.2.1 Community Expense.** Annual Assessments shall be based upon advance estimates of the Community Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and furnishing common utility services and other common items to the Dwellings. Such estimated expenses may include, without limitation, the following: road maintenance and repair; snow removal; management expenses; real property taxes and Special Assessments to the extent not separately assessed; premiums for all insurance that the Community Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Community Association employees, including fees for a manager; utility charges, including charges for utility services to the Dwellings to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Community Association for the benefit of the Owners under or by reason of this Community Declaration. Such shall constitute the Community Expenses, and all funds received from Assessments under this Section shall be part of the common expense fund. Two (2) separate and distinct funds shall be created and maintained hereunder, one (1) for operating expenses and one (1) for capital and reserve expenses which together shall constitute the common expense fund.

**9.2.2 Annual Budget Expenses.** Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31. On or before December 1 of each fiscal year the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for

the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

9.2.3 Notice and Payment. The Board may give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Assessment established by the Board nor relieve any Owner from its obligation to pay the Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Community Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessments shall commence on the date designated by the Board.

9.3 Exempt Property Assessments. All Exempt Property described herein shall be exempt from the Assessments and Membership in the Community Association and its associated privileges and responsibilities but shall nevertheless be subject to all other provisions of the Design Guidelines and this Community Declaration, including but not limited to, the use restrictions and architectural controls thereof. Anything in this Section to the contrary notwithstanding, if, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Exempt Property becomes Assessable Property, then each Assessment which would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (a) the date on which such Assessment would have been due, if such part of the Project had been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to the Project as provided for above, then the Community Association shall be deemed, automatically and without the need for further action, to have levied against it each Assessment for such fiscal year which the Community Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Exempt Property becomes an Assessable Property, as the case may be.

9.4 Special Assessments. In addition to the Annual Assessments authorized above, the Community Association may levy against each Lot and Dwelling which is Assessable Property, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses. Any such Special Assessment must be approved by the affirmative vote of at least a majority of the Total Votes of the Community Association. The provisions of this Section are not intended to preclude or limit the assessment, collection, or use of Annual Assessments for the aforesaid purposes.

9.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year. The Board in its

sole discretion from time to time may change the Assessment Period by amending the Bylaws pursuant to the amendment procedures thereof.

9.6 Rate of Annual and Special Assessments. Annual and Special Assessments of the Community Association payable during a calendar year shall be calculated as follows:

9.6.1 The Annual Assessments shall be assessed at a uniform rate for each Lot in such amounts as specified by the Board.

9.6.2 Commencing upon an Owner acquiring a Lot or Dwelling, each Owner of a Lot or Dwelling shall pay one hundred percent (100%) of the Annual Assessment attributable to his, her, or its Membership, regardless of whether a Dwelling has been completed on the Lot and whether such Dwelling is occupied.

9.7 Reserved.

9.8 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis, or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Community Declaration. The failure of the Community Association to send a bill to a Member shall not relieve any Member of his, her, or its liability for any Assessment or charge under this Community Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Community Association shall be under no duty to refund any payments received by it even though the ownership of a Lot or Dwelling changes during a fiscal year; successor Owners of Dwellings shall be given credit for prepayments, on a prorated basis, made by prior Owners.

9.9 Effect of Nonpayment of Assessments; Remedies of the Community Association.

9.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

9.9.2 If any installment of an Assessment assessed by the Board is not paid within thirty (30) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

9.9.3 The Community Association shall have an Assessment Lien on each Lot and Dwelling for all Assessments levied against the Lot or Dwelling and for all other fees and charges payable to the Community Association by the Owner of the Lot or Dwelling pursuant to this Community Declaration. Recording of this Community Declaration constitutes record notice and perfection of the Assessment Lien. The Board may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Community Association, the legal description of the Lot or Dwelling against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees, and reasonable attorney fees.

9.9.4 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any Municipal Authority or assessment district; and (c) the lien of any First Mortgage as provided in Section 14.3 below.

9.9.5 The Board shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorney fees, arbitration costs, court costs, collection costs, and all other sums payable to the Community Association by the Owner of the Lot or Dwelling have been paid in full.

9.9.6 The Board shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorney fees, and any other sums due to the Community Association in any manner allowed by law, including but not limited to taking either or all of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Board does not prejudice or waive its right to exercise the other remedy): (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot or Dwelling by sale or foreclosure conducted in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the foreclosure rights and methods described in the Act, the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Utah Code Title 38, Chapter 1, as amended from time to time, or any other manner permitted by law, and the Lot or Dwelling may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board hereby designates Bruce C. Jenkins as a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title, or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Lots or Dwellings arising pursuant hereto. In any such foreclosure, the Owner of the Lot or Dwelling being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorney fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Community Association shall

have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all Lots and Dwellings purchased at such sale.

9.9.7 If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Act, to terminate an Owner's right (a) to receive utility services paid as a Community Expense and (b) of access and use of the recreational facilities constituting a portion of the Common Areas.

9.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member, the Community Association, within a reasonable period of time thereafter, shall issue to such Member a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot or Dwelling as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Community Association may impose a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot or Dwelling in question.

9.11 Purposes for Which Community Association's Funds May be Used. The Community Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds, and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation, by any manner or method whatsoever, of any and all roads, lands, properties, Improvements, facilities, services, projects, programs, studies, and systems, within or without the Project, which may be necessary, desirable, or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Community Association may seek to aid, promote, and provide for such common benefit: maintenance and repair of roads within the Project; social interaction among Members and Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Common Area, recreation, insurance, communications, ownership, and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors, and committee members of the Community Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys, and accountants.

9.12 Surplus Funds. The Community Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Community Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Community Association may carry forward from year to year such surplus as the Board

in its discretion may determine to be desirable for the greater financial security of the Community Association and the accomplishment of its purposes.

**9.13 Reinvestment Fee Assessment.** In addition to all other Assessments and upon the conveyance of a Lot there shall be one (1) Reinvestment Fee charged to the buyer or seller, as the buyer and seller may determine, comprised of one (1) or more of the following charges:

9.13.1 an Assessment determined pursuant to resolution of the Board and charged for:

- (a) common planning, facilities, and infrastructure;
- (b) obligations arising from an environmental covenant;
- (c) community programming;
- (d) resort facilities;
- (e) open space;
- (f) recreation amenities;
- (g) charitable purposes; or
- (h) Community Association expenses as provided for in Utah Code § 57-1-46(1)(a).

9.13.2 The reinvestment fee shall be one-half percent (0.5%) of the fair market value of the Lot.—When the seller is a financial institution, the reinvestment assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred and Fifty Dollars (\$250.00). The Community Association may assign the charges directly to the Community Association's manager.

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

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

Reserve fund money means money to cover: (a) the cost of repairing, replacing, or restoring Common Areas and facilities that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the general budget or other funds of the Community Association; or (b) a shortfall in the general

budget, if: (i) the shortfall occurs while a state of emergency, declared in accordance with Utah Code § 53-2a-206, is in effect; (ii) the geographic area for which the state of emergency is declared extends to the entire state; and (iii) at the time the money is spent, more than ten percent (10%) of the Owners that are not Board Members are delinquent in the payment of Assessments as a result of events giving rise to the state of emergency.

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

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

9.15 Budget. At least annually the Board shall prepare and adopt a budget for the Community Association and the Board shall present the budget at a meeting of the Members. A budget presented by the Board is only disapproved if Member action to disapprove the budget is taken in accordance with the limitations under § 57-8a-215 of the Act.

9.16 Tenant Payment of Assessments.

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

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

9.16.3 A tenant to whom notice is given shall pay to the Community Association all future lease payments as they become due and owing to the Lot Owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Community Association notifies the tenant under Subsection (a) that the amount owing is paid. A Lot Owner shall credit each payment that the tenant makes to the Community Association under this Section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to the Community Association as required under this Section.

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

## ARTICLE 10 MAINTENANCE

### 10.1 Common Area and Public Right-of-Way.

10.1.1 The Community Association, or its duly delegated representative, shall manage, maintain, repair, and replace the Common Area and all Improvements located thereon (subject to Section 10.1.3), except the Community Association shall not be obligated to maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

10.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other properties maintained by the Community Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

10.1.3 In the event any subdivision plat, deed restriction, or this Community Declaration permits the Board to determine whether or not Owners of certain Lots or Dwellings will be responsible for maintenance of certain Common Area or public right-of-way areas, if any, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Community Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board. The Board may cause the Community Association to contract to provide maintenance

service to Owners of Lots and Dwellings having such responsibilities in exchange for the payment of such fees as the Community Association and Owner may agree upon.

**10.2 Installation and Maintenance of Landscaping on Lots.** The Owner of a Lot shall install (if not already installed) grass, trees, plants, and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants, and other landscaping improvements), on all portions of the Lot, including the Limited Common Area adjacent to such Lot, not later than the last day of September next occurring after the date on which a certificate of occupancy is issued with respect to a Lot or Dwelling on that Lot. All landscaping must be installed in accordance with plans approved in writing by the Design Review Committee. If landscaping and an irrigation system are not installed on a Lot or the applicable Limited Common Area in the manner and by the applicable date provided for in this Section, the Community Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Community Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Community Association by the Owner of the Lot, upon demand from the Community Association. Any amounts payable by an Owner to the Community Association pursuant to this Section shall be secured by the Assessment Lien, and the Community Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Community Declaration for the collection and enforcement of Assessments.

**10.3 Installation and Maintenance of Landscaping on Common Areas.** The Community Association shall install (if not already installed) grass, trees, plants, and other landscaping improvements (together with a pressurized irrigation system sufficient to adequately water any grass, trees, plants, and other landscaping improvements) as the Community Association deems appropriate, on all portions of the Common Areas (other than the Limited Common Areas) for the benefit of the Owners. After the initial installation of landscaping on the Limited Common Areas, which installation shall be the responsibility of the Owner of the applicable Lot, the Community Association shall maintain such Limited Common Area as part of the Common Areas. The cost of any such installation (except with respect to Limited Common Areas) and maintenance thereof shall be paid to the Community Association by the Owners as a part of the Annual Assessment upon demand and Assessment from the Board. All landscaping on the Common Areas must be installed in accordance with plans approved by the Design Review Committee. Any amounts payable by an Owner to the Community Association pursuant to this Section shall be secured by the Assessment Lien, and the Community Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Community Declaration for the collection and enforcement of Assessments.

**10.4 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Community Association is caused through the willful or negligent act of any Member, his or her family, Lessee, tenants, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Community Association Member's Lot or Dwelling is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Dwelling pursuant to this Section in connection with

a contract entered into by the Community Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.5 Improper Maintenance and Use of Lots and Dwellings. In the event any portion of any Lot or Dwelling is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Dwellings or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Dwelling is being used in a manner which violates the Governing Documents applicable thereto, or in the event the Owner of any Lot or Dwelling is failing to perform any of its obligations under the Governing Documents applicable thereto, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's expense. If at the expiration of said fourteen (14) -day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Dwelling is subject and shall be secured by the Assessment Lien.

## ARTICLE 11 INSURANCE

11.1 Scope of Coverage. The Community Association shall maintain, to the extent reasonably available, all insurance required under the Act. Including, but not limited to, the following insurance coverage:

11.1.1 Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations, and other items normally excluded from a property policy;

11.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than One Million Dollars(\$1,000,000.00). Such insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area and other portions of the Project which the Community Association is obligated to maintain under this Community Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

11.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

11.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Community Association or the Owners;

11.1.5 Each insurance policy purchased by the Community Association shall, to the extent reasonably available, contain the following provisions:

11.1.5.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Community Association or its agents, servants, or employees, or with respect to claims against Owners or Occupants;

11.1.5.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

11.1.5.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants, or Mortgagees;

11.1.5.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Community Association or other Owners or Occupants;

11.1.5.5 Statement naming the Community Association as the insured;

11.1.5.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction, or cancellation of the policy.

11.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Community Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Community Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

11.3 Payment of Premiums. The premiums for any insurance obtained by the Community Association pursuant to this Community Declaration shall be included in the budget of the Community Association and shall be paid by the Community Association.

11.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by the property insurance obtained by the Community Association, the loss shall be

adjusted with the Community Association, and the insurance proceeds shall be payable to the Community Association and not to any Mortgagee. Subject to the provisions of Section 11.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

11.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Community Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Community Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Community Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Community Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of at least a majority of the Total Votes of the Community Association; or (iii) shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Community Association.

11.6 Director's and Officer's Insurance. The Board shall obtain director's and officer's liability insurance for officers and directors of the Community Association. Such insurance shall, among other coverages, include coverage for both monetary and non-monetary claims and shall be in an amount customary for a project of a type the same as or similar to this Project.

## **ARTICLE 12**

### **DAMAGE OR DESTRUCTION**

12.1 Community Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Community Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Areas upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 13 below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Community Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Community Association as attorney-in-fact. All proceeds from the insurance required hereunder shall be payable to the Community Association except as otherwise provided in this Community Declaration.

12.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Improvements on the Common Areas in the Project, the Community Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Areas so damaged or destroyed. "Repair and reconstruction" as used in this Section 12.2 shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

12.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Community Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Community Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Community Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4 Funds for Repair and Reconstruction. The proceeds received by the Community Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Community Association may, pursuant to Section 9.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Community Association and the amounts received from the Special Assessments provided for in Section 12.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the

costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Community Association under Section 12.4 above, first to the Mortgagees and then to the Owners, as their interests appear.

12.6 Decision Not to Rebuild. If Members representing at least sixty-seven percent (67%) of the Total Votes of the Community Association and fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each Mortgage owned) of the Lots and Dwellings vote not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained as an undeveloped portion of the Common Areas by the Community Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Community Association, first to the Mortgagees and then to the Owners, as their interests appear.

12.7 Notice to First Mortgagees. The Community Association shall give timely written notice to any holder of any First Mortgage on a Lot or Dwelling who requests such notice in writing in the event of substantial damage to or destruction of a material part of the Common Areas.

## ARTICLE 13 CONDEMNATION

13.1 Rights of Owners. Whenever all or any part of the Common Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Community Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Community Association as trustee for all Owners to be disbursed according to this Section. If the taking involves a portion of the Common Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-seven percent (67%) of the total votes of the Community Association shall otherwise agree, the Community Association shall restore or replace such Improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board and the Design Review Committee. If such Improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Community Association, first to the Mortgagees and then to the Owners, as their interests appear.

13.3 Complete Condemnation. If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Community Declaration shall terminate, and the portion of the condemnation award attributable to the Common Areas shall be distributed to Owners based upon the relative value of the Lots and Dwellings (as applicable) prior to the condemnation.

## ARTICLE 14 MORTGAGEE REQUIREMENTS

14.1 Notice of Action. Upon written request made to the Community Association by a Mortgagee, an insurer, or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer, or governmental guarantor and the Lot number or address of the Dwelling, any such Mortgagee, insurer, or governmental guarantor shall be entitled to timely written notice of:

14.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot or Dwelling on which there is a Mortgage held, insured, or guaranteed by such Mortgagee, insurer, or governmental guarantor;

14.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot or Dwelling is subject to a Mortgage held, insured, or guaranteed by such Mortgagee, insurer, or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

14.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond or insurance maintained by the Community Association.

14.2 Availability of the Project Documents and Financial Statements. The Community Association shall maintain and have current copies of the Governing Documents and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots or Dwellings. Generally, these documents shall be available during normal business hours.

14.3 Subordination of Lien. The Assessment Lien shall be subject and subordinate to any duly executed First Mortgage on a Lot or Dwelling recorded prior to the date on which such Assessment Lien is recorded and any holder of such First Mortgage which comes into possession of a Lot or Dwelling pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot or Dwelling free of any claims for unpaid installments of Assessments and charges against the Lot or Dwelling which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. No Assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into

possession or which obtains title shall be collected or enforced by the Community Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot or Dwelling affected or previously affected by the First Mortgage concerned. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

14.4 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 11.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Community Association.

14.5 Priority. No provision of this Community Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Dwellings, or the Common Areas.

**ARTICLE 15  
RESERVED**

**ARTICLE 16  
RESERVED**

**ARTICLE 17  
TERM, TERMINATION, AND AMENDMENT**

17.1 Term; Method of Termination. This Community Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Community Declaration is recorded. From and after said date, this Community Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Community Declaration by the then Members casting eighty percent (80%) of the Total Votes of the Community Association cast at a meeting held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Community Declaration may be terminated at any time by the then Members casting eighty percent (80%) of the Total Votes of the Community Association cast in favor of termination at a meeting held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Community Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Community Association shall be dissolved pursuant to the terms set forth in its Articles.

17.2 Amendments. This Community Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Community

Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 17.4 or elsewhere in this Community Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Members casting at least sixty-seven percent (67%) of the Total Votes of the Community Association voted affirmatively for the adoption of the amendment.

### 17.3 Reserved.

17.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Community Declaration to the contrary notwithstanding, the Board reserves the unilateral right to amend all or any part of this Community Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC, or FNMA and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Community Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s), Dwelling(s), or any portions thereof. Any such amendment shall be effected by the Recordation by the Board of a Certificate of Amendment duly signed and acknowledged specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein.

## ARTICLE 18 BINDING ARBITRATION FOR ENFORCEMENT OF GOVERNING DOCUMENTS

18.1 **OPT-OUT RIGHT.** IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, SUCH OWNER MUST SEND A SIGNED LETTER TO THE COMMUNITY ASSOCIATION, ATTENTION: ARBITRATION OPT-OUT, POSTMARKED WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE LOT OR DWELLING IS RECORDED IN THE OFFICIAL RECORDS OF WASHINGTON COUNTY, UTAH, STATING THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS Article 18. ANY DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL NOT RESULT IN AN OPT-OUT FROM ANY PRIOR ARBITRATION PROVISION IN ANY OTHER GOVERNING DOCUMENT.

18.2 **Arbitration Terms Defined.** The following capitalized words, phrases, or terms used in the arbitration provision described in this Article 18 ("Arbitration Provision") shall have the meanings set forth below:

18.2.1 "Bound Party" means the Community Association, Declarant, Declarant Affiliates, and any manager; the successors and assigns of such Bound Parties; the

owners and their heirs, successors, and assigns; and all other persons subject to this Community Declaration. "Bound Party" also includes any person not otherwise subject to this Community Declaration who agrees to submit to this Arbitration Provision and the agents, representatives, members, employees, officers, and/or directors of the foregoing Bound Parties, if a Claim is also asserted at the same time against another Bound Party and/or another Bound Party may have a financial obligation for any recovery of the party asserting the Claim. "Institutional Party" means each Bound Party except an Owner.

18.2.2 "Claim" means any claim, dispute, or controversy of one (1) or more Bound Parties against one (1) or more other Bound Parties arising out of or relating to the Property, the Project, Lots, Dwellings, this Community Declaration, or any other Governing Documents, including any such claim, dispute, or controversy regarding or arising over the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to, or survey of, the Property or the Project. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Community Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation, or common law; and disputes involving requests for injunctions or other equitable relief.

18.2.3 "Exempt Claim" means any of the following Claims, which will not be subject to this Arbitration Provision: (A) any individual action brought by an Owner in small claims court or such Owner's state's equivalent court, unless such action is transferred, removed, or appealed to a different court; (B) any action to effect a judicial or non-judicial foreclosure; (C) any eviction or other summary proceeding to secure possession of real property or an interest therein; (D) any action in any bankruptcy proceeding to assert, collect, protect, realize upon, or obtain possession of the collateral for any amount owed; (E) any action to quiet title; (F) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; and (G) any dispute concerning the validity and effect of the ban set forth in Section 18.7 below on class actions and private attorney general proceedings. Notwithstanding the prior sentence, at an Owner's request the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (B)-(F) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one (1) or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (B)-(F) above, an Owner may assert in court on an individual basis any related defenses or Claims such Owner may have.

18.2.4 "Administrator" means either of the following companies selected by the party initiating the arbitration: National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, MN 55405, <http://www.arb-forum.com>, or the American Arbitration Association ("AAA"), 335 Madison Avenue, New York, NY 10017, <http://www.adr.org>. However, neither NAF nor AAA may serve as Administrator, without the consent of all

Bound Parties asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision.

18.3 Claims by Bound Parties. Subject to an Owner's right to opt out of this Arbitration Provision, each Bound Party agrees that, upon the election of any Bound Party asserting or defending a Claim (other than an Exempt Claim), such Claim shall be resolved by binding individual (and not class) arbitration. A notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

18.4 Arbitration Fees. If an Owner cannot obtain a waiver of any arbitration fees, the Institutional Parties will consider in good faith any request an Owner submits for them to pay fees for such Owner. In any event, if applicable law requires an Institutional Party to pay or reimburse an Owner for any such fees, such law will control. Each Bound Party shall bear the expense of that Party's attorneys, experts, and witnesses, regardless of which Party prevails in the arbitration, unless applicable law and/or this Arbitration Provision gives a Party the right to recover any of those fees from another Party. If a participatory hearing is requested, it will take place in Washington County, Utah or, if the Administrator determines that such location would be unfair to an Owner, at a location reasonably convenient to such Owner and the other Bound Parties.

18.5 Governing Law. The Bound Parties contract, select, agree, and acknowledge that this Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1–16 and not state arbitration laws. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations, and privilege rules related to any dispute. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory, and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive, and other equitable relief; and attorney fees and costs. In addition to the parties' rights to obtain information under the Administrator's rules, either party may ask the arbitrator for more information from any other party.

18.6 Appeal of Arbitrator's Decision. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than One Hundred Thousand Dollars (\$100,000.00), any party may appeal the award to a three (3) -arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs, regardless of its outcome. However, the Institutional Parties to an arbitration will consider in good faith any reasonable written request for them to bear the cost if the Owner is the appealing party.

18.7 Binding Individual Arbitration. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM: (i) NO PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM; (ii) NO PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER, OR OTHERWISE; (iii) NO PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN THE ARBITRATION; AND (iv) THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION OR PRIVATE ATTORNEY GENERAL ARBITRATION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the prohibitions against class proceedings and private attorney general proceedings shall be resolved by a court and not an arbitrator or the Administrator.

18.8 Severability. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the prohibition against class proceedings and private attorney general proceedings) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If after all available appeals a determination is made that the prohibition against class proceedings or private attorney general proceedings is unenforceable in connection with any Claim brought on such basis, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding.

## **ARTICLE 19** **GENERAL PROVISIONS**

19.1 Enforcement and Rights of Action. This Community Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Community Declaration, the other Governing Documents, or the decisions of the Community Association. Owners shall have a similar right of action against the Community Association. This Section 19.1 shall be subject to the Arbitration Provision described in Article 18 above.

19.2 Interpretation. Except for judicial construction, the Community Association shall have the exclusive right to construe and interpret the provisions of this Community Declaration. In the absence of any adjudication to the contrary by an arbitrator or court of competent jurisdiction, the Community Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by this Community Declaration.

19.3 Severability. Any determination by any arbitrator or court of competent jurisdiction that any provision of this Community Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

19.4 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Community Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the

death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Community Declaration is Recorded.

19.5 Change of Circumstances. Except as otherwise expressly provided in this Community Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Community Declaration.

19.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Community Declaration, the Community Association shall have the right to adopt, as part of the Community Rules, additional rules and regulations with respect to any other aspects of the Community Association's rights, activities, and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Governing Documents.

19.7 Laws, Ordinances, and Regulations.

19.7.1 The covenants, conditions, and restrictions set forth in this Community Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances, and regulations, and compliance with this Community Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances, and regulations.

19.7.2 Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be in violation of this Community Declaration and subject to any or all of the enforcement proceedings set forth herein.

19.8 References to this Community Declaration in Deeds. Deeds to and instruments affecting any Lot or Dwelling or any other part of the Project may contain the covenants, conditions, and restrictions herein set forth by reference to this Community Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Community Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her, or its heirs, executors, administrators, successors, and assigns.

19.9 Gender and Number. Wherever the context of this Community Declaration so requires, any word used in the masculine, feminine, or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

19.10 Captions and Title; Section References; Exhibits. All captions, titles, or headings of the Articles and Sections in this Community Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this

Community Declaration to numbered Articles, Sections, or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Community Declaration, unless the context otherwise requires. Any Exhibits referred to in this Community Declaration are hereby incorporated herein by reference and fully made a part hereof.

19.11 Notices. When notice is required under this Community Declaration, notice shall be given as provided in the Bylaws.

19.12 Indemnification. The Community Association shall indemnify each and every director and officer of the Community Association, each and every member of the Design Review Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Community Association, former members of the Design Review Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorney fees reasonably incurred by or imposed upon an Association Official in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Community Association (except indirectly to the extent that such Association Official may also be a Member of the Community Association and therefore subject to Assessments hereunder to fund a liability of the Community Association), and the Community Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment, or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Community Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws, or applicable law, such Association Official shall promptly upon demand repay to the Community Association the total of such funds advanced by the Community Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

19.13 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area or Limited Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate, or otherwise alienate all or any of such Owner's interest in the Common Area, including Limited Common Area, or any funds or other assets of the Community Association except in connection

with the sale, conveyance, or hypothecation of such Owner's Dwelling (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which shall be subject to Article 6) which may or may not be subject to this Community Declaration.

19.14 Reserved.

19.15 Number of Days. In computing the number of days for purposes of any provision of this Community Declaration, the Articles, or the Bylaws, all days shall be counted including Saturdays, Sundays, and legal holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or legal holiday.

19.16 Notice of Violation. The Community Association shall have the right to Record a written notice of violation by any Owner or Occupant of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Community Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot or Dwelling against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Community Association pursuant to this Community Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Occupant, and to any subsequent purchaser of the Lot or Dwelling, that there is such a violation. If, after the Recordation of such notice, it is determined by the Community Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Community Association shall Record a notice of compliance which shall state the legal description of the Lot or Dwelling against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Community Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

19.17 Reserved.

19.18 Reserved.

19.19 Reserved.

19.20 List of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each Person who is an Owner, the address of such Person, and the Lot or Dwelling which is owned by him or her; (ii) the name of each Person who is an Eligible Mortgagee, the address of such Person and the Lot or Dwelling which is encumbered by the Mortgage held by such Person; and (iii) the name of each Person who is an insurer or governmental guarantor, if known to the Board, and the address of such Person. In the event of

any transfer of a fee or undivided fee interest in a Lot or Dwelling, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of Record in the office of the County Recorder of Washington County, Utah, as applicable. The Board may for all purposes act and rely on the information concerning Owners and Lot or Dwelling ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Dwelling which is obtained from the office of the County Recorder of Washington County, Utah, as applicable. The address of an Owner shall be deemed to be the address of the Lot or Dwelling owned by such Person unless the Board is otherwise advised.

19.21 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Community Declaration.

19.22 Reserved.

19.23 Use of the Project Name. No Person shall use the term the “Encanto Resort” or any derivative thereof in any printed or promotional material without the prior written consent of the Board, which consent may be withheld for any reason in the Board’s sole and exclusive discretion.

19.24 Interpretation of the Covenants. Except for judicial construction, the Community Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Community Declaration. In the absence of any adjudication to the contrary by an arbitrator or court of competent jurisdiction, the Community Association’s construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by this Community Declaration and provisions hereof.

19.25 Action of the Community Association. Except as limited in this Community Declaration or the Bylaws, the Board acts in all instances on behalf of the Community Association.

19.26 Fines. The Community Association, through its Board, shall have the power to levy fines for violations of the Community Association’s Governing Documents and fines may only be levied for violations of the Governing Documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the Governing Documents. The Board shall adopt a rule for the procedure to enforce the Governing Documents and levy fines, including a schedule of fines.

19.27 Tenant Liability. Pursuant to § 57-8a-218(2)(b) of the Act, a tenant shall be jointly and severally liable to the Community Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant.

[SIGNATURES ON FOLLOWING PAGE]



**CERTIFICATE OF AMENDMENT**

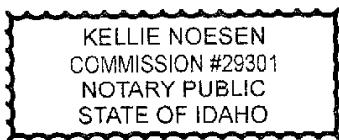
IN WITNESS WHEREOF, the President of the Community Association hereby certifies on this 11 day of Sept, 2023, that this Amended and Restated Community Declaration was approved by the affirmative vote of Members holding at least sixty-seven percent (67%) of the Total Votes of the Community Association either at a meeting or by separate written ballot without a meeting, pursuant to Article 17, Section 17.2 of the Original Community Declaration.

**THE ENCANTO RESORT COMMUNITY  
ASSOCIATION, INC.**, a Utah nonprofit corporation

By: Fred Boll  
Its: President

STATE OF UTAH )  
COUNTY OF Bannock )  
ss.

On this 13 day of September, 2023, before me personally appeared Fred Boll, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President of The Encanto Resort Community Association, Inc., a Utah nonprofit corporation, and that the foregoing document was signed by him on behalf of the Community Association by authority of its Bylaws, Community Declaration, or resolution of the Board, and he acknowledged before me that he/she executed the document on behalf of the Community Association and for its stated purpose.



Kellie Noesen  
Notary Public Residing in Pocatello  
Expires 02/24/2028

Exhibit A  
(Legal Description)

This Amended and Restated Community Declaration for Encanto Resort, a Planned Unit Development, affects the following real property, all located in Washington County, State of Utah:

All of Lots 1 through 30, together with all Common Area, Encanto Resort 4th Amd (I), according to the Official Community Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: I-ENC-1 through I-ENC-30