

Amended Restrictive Covenants Page 1 of 40  
Gary Christensen Washington County Recorder  
05/23/2025 10:07:11 AM Fee \$350.00 By SNOW  
CALDWELL BECKSTROM & WILBANKS, PLLC

WHEN RECORDED, MAIL TO:

ROCKWELL HOMES UTAH, INC.  
2621 E 1240 S,  
Saint George, UT 84790

Affects Parcel Nos. *See Exhibit "A"*

**1<sup>ST</sup> AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS**

**FOR**

**FINLEY FARMS SUBDIVISION**  
(A Planned Residential Development)

May 22, 2025

**\*\*\*NOTE TO TITLE SEARCHERS, DEPUTY RECORDERS AND  
READERS IN GENERAL\*\*\***

The purpose of this instrument is to:

1. Amend and fully restate the following:
  - a. The *Declaration of Covenants, Conditions and Restrictions For Finley Farms Subdivision* recorded as Document No. 20230003458 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah
  - b. The *1<sup>st</sup> Amendment to the Declaration of Covenants, Conditions and Restrictions* recorded as Document No. 20240025117 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah
2. See that the restrictive covenants and equitable servitudes contained herein are properly indexed against each lot and future lot within the Finley Farms Subdivision located in Washington County, State of Utah.

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**FIRST AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR**

**FINLEY FARMS SUBDIVISION  
(a Planned Residential Development)**

This First Amended & Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements ("1<sup>st</sup> Restated Declaration") for Finley Farms Subdivision, a planned residential development, is made and executed this 22<sup>nd</sup> day of May 2025, by ROCKWELL HOMES UTAH INC, a Utah corporation as to Phases 1A, 1B, 2, 3, 4 and 5 of the Development (defined below) and NOVELTY HOMES, LLC, a Utah limited liability company as to Phase 6 of the Development (collectively "Successor Declarants"). The capitalized terms used in the Preamble are defined in Section 1, below.

**RECITALS**

A. WHEREAS the Successor Declarants are the Owners of, or hold the rights of a declarant for, certain lots and parcels of real property planned as a residential development named Finley Farms Subdivision, located in the Washington City, Washington County, State of Utah and described more fully as:

*See Exhibit "A"*

("Development").

B. WHEREAS the initial portion of the Development was first created by the recording of a final plat for Finley Farms Subdivision, Phase 1A on February 8, 2023, as Document No. 20230003457 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah ("Phase 1A Plat").

C. WHEREAS the Finley Farms Subdivision was conceptually and partially developed by MST 150, LLC, a Utah limited liability company ("Original Declarant").

D. WHEREAS simultaneously with the recording of the Phase 1A Plat, the Original Declarant recorded an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Finley Farms Subdivision" as Document No. 20230003458 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah ("Original CC&Rs") against the lots created by the Phase 1A Plat.

E. WHEREAS the Original CC&Rs identified MST 150, LLC as the Declarant.

F. WHEREAS on May 14, 2024, a final plat for Finley Farms Subdivision Phase 3 was recorded as Document No. 20240015037 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah which made the lots created in said plat subject to the Original Declaration.

G. WHEREAS on August 2, 2024, an Assignment of Declarant Rights was recorded as Document No. 20240024234 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah ("Assignment of Rights").

H. WHEREAS the Assignment of Rights effectively transferred all of the rights and obligations of the Original Declarant under the Original CC&Rs to the Successor Declarants.

I. WHEREAS on August 9, 2024, the Successor Declarants recorded an instrument entitled "1<sup>st</sup> Amendment to the Declaration of Covenants Conditions and Restrictions" as Document No. 20240025117 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah ("Amendment to Original CC&Rs").

J. WHEREAS on February 19, 2025, a final plat for Finley Farms Subdivision Phase 1B was recorded as Document No. 20250005466 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah which made the lots created in said plat subject to the Original Declaration.

K. WHEREAS on March 10, 2025, a final plat for Finley Farms Subdivision Phase 4 was recorded as Document No. 20250007658 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah which made the lots created in said plat subject to the Original Declaration.

L. WHEREAS on March 18, 2025, a final plat for Finley Farms Subdivision Phase 6 was recorded as Document No. 20250008832 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah which made the lots created in said plat subject to the Original Declaration.

M. WHEREAS on April 8, 2025, a final plat for Finley Farms Subdivision Phase 2 was recorded as Document No. 20240015037 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah which made the lots created in said plat subject to the Original Declaration.

N. WHEREAS the Development has been, and will continue to be, developed with certain common objectives, and that Owners of Lots within the Development will have certain common interests. The Development and any other area of the Annexable Territory added to the Development will be developed with objectives designed to benefit all the property within the Development. This common development scheme created by the Declarant and the Successor Declarants imposes reciprocal burdens and benefits on all of the Development.

O. WHEREAS the general plan for the Development includes forming a corporation pursuant to the Utah Revised Nonprofit Corporations Act to which will be assigned the powers of (1) owning, maintaining and administering the Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing Assessments. The Members of the Association will be the Owners of Lots located within Development, as further provided in Section 6.1 of this 1st Restated Declaration.

P. WHEREAS the Successor Declarants declare that portions of the Development will be transferred, encumbered, leased, used and improved subject to this 1st Restated Declaration, which is for the purpose of enhancing the attractiveness and desirability of the Development, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Development. The covenants, conditions, restrictions, reservations, easements and equitable servitudes in this 1st Restated Declaration will (1) run with and burden the Development and be binding upon all Persons having or acquiring any interest in the Development, their heirs, successors and assigns; (2) inure to the benefit of the Development and all interests therein; (3) inure to the benefit of and be binding upon the Successor Declarants and their respective successors-in-interest, each Owner and each Owner's successors in interest; and (4) may be enforced by the Successor Declarants, any Owner and the Association.

E. This 1st Restated Declaration constitutes an amendment and full restatement of the Original Declaration and the Original Declaration Amendment. It supersedes and replaces all prior declarations, amendments, and restatements thereof in their entirety.

## INTRODUCTION TO THE DEVELOPMENT

*The Successor Declarants have established this 1st Restated Declaration to provide a governance structure for the Development. The Association is the homeowner's association formed to manage, maintain and govern the Development. The Association's powers are described in this 1st Restated Declaration and the Bylaws. The majority of the Association's business is overseen by its Board of Directors. Day-to-day activities are supervised by the Association's officers and the Community Manager,*

*if so designated by the Association. The ARC is a committee of the Association formed to have jurisdiction over design, development and aesthetics in the Development.*

## **FIRST RESTATED DECLARATION**

### **1. DEFINITIONS AND INTERPRETATION.**

*Unless the context clearly indicates otherwise, certain terms as used in this 1st Restated Declaration and the foregoing Recitals shall have the meanings set forth in this Section.*

1.1. *1st Restated Declaration* means this entire instrument, and its exhibits, as amended or restated.

1.2. *Architectural Review Committee* or *ARC* means the Architectural Review Committee created pursuant to Section 5, below.

1.3. *Annexable Territory* means the real property described in **Exhibit "B"**, all or any portion of which may be made subject to this 1st Restated Declaration by following the procedure established in this 1st Restated Declaration.

1.4. *Architectural Guidelines* mean the design standards, guidelines, procedures and rules adopted pursuant to Section 5, below.

1.5. *Articles* mean the Articles of Incorporation of the Association as amended or restated.

1.6. *Assessment* means any Common Assessment, Capital Improvement Assessment, Compliance Assessment or Reconstruction Assessment.

1.7. *Assessment Unit* means a unit of value assigned to Lots that is used to calculate each Lot's share of Common Expenses and to establish the number of votes assigned to each Lot.

1.8. *Association* means the FINLEY FARMS SUBDIVISION ASSOCIATION, a Utah non-profit corporation, its successors and assigns.

1.9. *Association Property* means all the real property and Improvements, whether annexed to the Development or not, which are owned in fee simple by the Association, or for which the Association has rights or obligations by easement, lease, encroachment permit, license or other agreement. Association Property may include areas on public property designated by a local government agency for maintenance by the Association pursuant to this 1st Restated Declaration, any Supplemental Declaration, any agreement or Recorded plat. The Association Property will be identified in the Plat and/or designated in Recorded Supplemental Declarations. All main utility trunk lines, pipeworks, wires, cables, conduits and transformers located within the Development, whose dedication to the public utility is rejected shall also be considered dedicated to the Association. All Association Property is Common Area.

1.10. *Board* or *Board of Directors* or *Board* means the Association's Board of Directors.

1.11. *Budget* means a written, itemized estimate of the Association's income and common Expenses.

1.12. *Bylaws* mean the Bylaws of the Association initially in the form of **Exhibit "C"**, as amended or restated.

1.13. *Capital Improvement Assessment* means a charge against the Owners and their Lots representing a portion of the cost to the Association for installing or constructing Capital Improvements on the Association Property. Capital Improvement Assessments will be levied in the same proportion as Common Assessments.

1.14. *City* means Washington City, Utah, and its various departments, divisions, employees and representatives.

1.15. *Close of Escrow* means the date on which a deed is Recorded conveying a Lot to a member of the public. The term "Close of Escrow" does not include the Recordation of a deed (i) between the Successor Declarants and (a) any successor to any rights of the Successor Declarants.

1.16. *Common Area* means land within the Development that is (a) designated in a Plat or this 1<sup>st</sup> Restated Declaration as Common Area or Limited Common Area, or (b) owned or maintained by the Association for the primary benefit of the Owners within the jurisdiction of the Association. Common Area also includes all Association Property.

1.17. *Common Assessment* means a charge against the Owners and their Lots to be used to satisfy Common Expenses. Common Assessments are composed of a "General Assessment Component" and, possibly, a "Special Benefit Area Assessment Component," as provided in Section 8.4.

1.18. *Common Expenses* means those expenses for which the Association is responsible under this 1<sup>st</sup> Restated Declaration, including, but not limited to, the actual and estimated costs of: a) Maintaining, managing and operating the Association Property and Common Area, b) Unpaid Capital Improvement Assessments, Common Assessments, Compliance Assessments and Reconstruction Assessments, c) Any commonly metered utilities or other commonly metered charges, d) Managing and administering the Association, e) Compensation paid by the Association to community managers, accountants, attorneys and Association employees and contractors, e) all utilities, landscaping, trash pickup and other services benefiting the Association Property or Common Area, f) Maintaining address identification signs, g) Fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Development and the directors, officers and agents of the Association, h) Bonding the members of the Association Board of Directors, its officers and other representatives, i) Taxes paid by the Association, j) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Development, k) Reasonable reserves, l) Providing protective services for the Association Property or other portions of the Development, m) Payments under contracts entered into by the Association, n) Expenses designated as Common Expenses in Supplemental Declarations, o) All other expenses incurred by the Association for any reason whatsoever in connection with the Development, for the common benefit of the Owners.

1.19. *Community Guidelines* mean the Community Guidelines adopted, amended or restated by the Board.

1.20. *Community Manager* means the Person who provides professional community management for the Association and the Development.

1.21. *Compliance Assessment* means a charge against a particular Owner directly attributable to or reimbursable by that Owner equal to the cost incurred by the Association for corrective action performed pursuant to the Governing Documents, or a fine or penalty assessed by the Board, plus interest and other charges on such Compliance Assessments as provided for in the Governing Documents. Compliance Assessments may include any collection costs, expenses and reasonable attorneys' fees.

1.22. *Development* means the FINLEY FARMS SUBDIVISION, a planned residential development located in St. George, Utah.

1.23. *Family* means (a) one Person or a group of natural Persons related to each other by blood, marriage or adoption, or (b) a group of natural Persons defined by the Washington City Code to be a family.

1.24. *FHA* means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.25. *FHLMC* means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.26. *Fiscal Year* means the fiscal accounting and reporting period of the Association.

1.27. *FNMA* means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and its successors.

1.28. *GNMA* means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.29. *Governing Documents* mean this 1st Restated Declaration, all Supplemental Declarations, the Articles, Bylaws, the Architectural Guidelines and the Community Guidelines.

1.30. *Improvement* means any structure, vegetation or appurtenance including buildings, walkways, irrigation systems, garages, roads, driveways, parking areas, fences, walls, stairs, decks, landscaping, antennae, the paint on all exterior surfaces, windbreaks, patio covers, railings, gates, poles, exterior air conditioning and water-softening fixtures or equipment. The Architectural Guidelines may identify additional items that are Improvements.

1.31. *Lot* means a lot or parcel of land shown on a Recorded final Plat of any portion of the Development, including any Lot in any phase of the Development, but not the Association Property and the Common Area. Lot will also mean any portion of a lot or parcel of land designated as a Lot in a Supplemental Declaration.

1.32. *Maintenance Funds* mean the accounts created for the Association receipts and disbursements pursuant to Section 8.

1.33. *Member* means any Person, by virtue of being an Owner, holds a Membership and the Successor Declarants.

1.34. *Membership* means the property, voting and other rights and privileges, duties and obligations of Members.

1.35. *Mortgage* means any instrument Recorded against one or more Lots, Common Areas or other portions of the Development to secure the performance of an obligation and includes a mortgage and a deed of trust.

1.36. *Mortgagee* means a Person to whom a Mortgage is made and includes the beneficiary under a Mortgage, or the assignees of such Mortgage identified in a Recorded assignment of rights under the Mortgage, or a beneficiary of a deed of trust.

1.37. *Notice and Hearing* means written notice and a hearing before the Board as provided in the Bylaws, this 1st Restated Declaration or Community Guidelines.

1.38. *Owner* means the Person or Persons, including the Successor Declarants, holding fee simple interest of record to any Lot. The term "Owner" includes a seller under an executory contract of sale but excludes any Mortgagee unless such Mortgagee has acquired title for other than security purposes.

1.39. *Person* means a natural individual or any entity with the legal capacity to hold title to real property.

1.40. *Phase* means any portion of the Development defined as a Phase in this 1st Restated Declaration or in a Supplemental Declaration.

1.41. *Reconstruction Assessment* means a charge against the Owners and their Lots representing a portion of the Association's cost to reconstruct any Improvements on or to the Association Property. Reconstruction Assessments will be levied in the same proportion as Common Assessments.

1.42. *Record or File* means, with respect to any document, entry of such document in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

1.43. *Reserves* means Association funds set aside for funding periodic painting and maintaining of the components of the Association Property which would not reasonably be expected to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Association obtains. The amount of Reserves will be determined annually by the Board pursuant to reserve cost guidelines established in accordance with prudent property management practices.

1.44. *Residence* means a structure intended for use and occupancy by one Family and located on an individual Lot within the Development.

1.45. *Special Benefit Area* means a group of Lots that share the costs of either (i) maintaining specified Improvements or (ii) receiving certain services. The additional administrative costs of administering each Special Benefit Area shall be a part of the Common Expenses allocated to the Special Benefit Area Component of Common Assessments. Special Benefit Areas may be identified by the Successor Declarants in this 1st Restated Declaration or any Supplemental Declaration when the Successor Declarants, in their sole discretion, determines that a group of Lots benefits more from the specified Improvements or services than the Development as a whole. The Board may also identify Special Benefit Areas as authorized in this 1st Restated Declaration or a Supplemental Declaration.

1.46. *Successor Declarants* means ROCKWELL HOMES UTAH INC, a Utah corporation, as to Phases 1A, 1B, 2, 3, 4 and 5 of the Development, and NOVELTY HOMES, LLC, a Utah limited liability company as to Phase 6 of the Development, their successors and any Person to which it shall have assigned any rights hereunder by express written assignment. Any such assignment may include some or all of the rights of the Successor Declarants and may be subject to such purposes, conditions or limits as the Successor Declarants may impose in its sole and absolute discretion. As used in this definition "successor" means a Person who acquires the Successor Declarants or substantially all of their assets, or who merges with the Successor Declarants, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise.

1.47. *Successor Declarants' Representative* means the Representative appointed by a Successor Declarant to represent a Successor Declarant and to cast the Class A and Class B votes of the Successor Declarant.

1.48. *Supplemental Declaration* means an instrument Recorded to annex additional real property to the Development and to act as a supplement this 1st Restated Declaration, as such instrument is amended or restated.

1.49. *Telecommunication Facilities* means (1) Improvements, equipment and facilities for (i) telecommunications, (ii) transfer of audio, video and data signals, (iii) transfer of any other signals used for transmission of intelligence by electrical, light wave, wireless frequencies or radio frequencies, and (iv) any other methods of communication and information transfer; (2) all associated Improvements, equipment and facilities, including but not limited to outside plant ducts, manholes, riser cables, protection equipment, communications rooms, antennas, power outlets, power conditioning and back-up power supplies, cross connect hardware, copper, fiber, and coaxial cables, towers, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber optics, and any other necessary or appropriate enclosures and connections; and (3) power generation serving the Improvements, equipment and facilities described in subparts (1) and (2) of this sentence. The Successor Declarants intend to have the term "Telecommunication Facilities" be interpreted as broadly as possible and to include relocated facilities, expansion of facilities, and/or facilities used for any and all new technology that replaces any Telecommunication Facilities. If there is a doubt as to whether an item fits within the definition of Telecommunication Facilities, the term is to be interpreted to include that item.

1.50. *Telecommunications Services* means Telecommunication Facilities, Improvements, and services for cable television, communications, telecommunications, antenna, high-speed data, telephony and all related vertical services, intranet, internet, information transfer (including wireless transfer), transmission, video and other similar services. The Successor Declarants may expand this definition in any Supplemental Declaration.

1.51. *VA* means the Department of Veterans Affairs of the United States of America and its successors.

## 2. INTERPRETATION OF THIS 1ST RESTATED DECLARATION.

2.1. **GENERAL RULES.** This 1st Restated Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Development and for the maintenance of the Common Areas and Association Property. Any violation of this 1st Restated Declaration is a nuisance. The Governing Documents shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the appropriate Local Governmental Agencies. The Section and Subsection headings are for convenience only and may not be considered or referred to in resolving questions of interpretation or construction. As used in this 1st Restated Declaration, the singular includes the plural and the plural the singular, and the masculine, feminine and neuter each include the other, unless the context dictates otherwise. Except as otherwise expressly provided in this 1st Restated Declaration, any reference in this 1st Restated Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. *Exhibit "A"* and *Exhibit "B"* are incorporated in this 1st Restated Declaration by this reference. All references made in this 1st Restated Declaration to statutes are to those statutes as amended or restated or to subsequently enacted replacement statutes. Unless otherwise indicated, references to Sections, Subsections and Exhibits are to the Sections, Subsections and Exhibits of this 1st Restated Declaration.

2.2. **STATEMENTS IN ITALICS.** The sections or portions of the Governing Documents printed entirely or mostly in italics are provided as simplified, general explanations of the purposes of the Articles, Sections or paragraphs of the Governing Documents and the scheme of governance for the Development. These statements in italics are provided for convenience and may not be considered in resolving questions of interpretation or construction of the Governing Documents.



2.3. **INTENT OF DECLARANT.** The Successor Declarants intend that the Development be developed for residential uses of varying densities and other uses defined in Supplemental Declarations, all consistent with this 1st Restated Declaration and any applicable Supplemental Declarations. In addition, the Successor Declarants, at its option, may designate areas for maintenance, recreational, institutional or other purposes.

2.4. **RELATIONSHIP TO OTHER DECLARATIONS.** As the Successor Declarants wish to annex portions of the Annexable Territory and make said real property subject to the 1st Restated Declaration, the Successor Declarants shall Record a Supplemental Declaration indicating such. Supplemental Declarations may impose such additional, different or more restrictive conditions, covenants, restrictions, easements and limits as the Successor Declarants may deem advisable, taking into account the particular requirements of each Phase. If there is any conflict between any Supplemental Declaration and the 1st Restated Declaration, the Supplemental Declaration shall control with respect to the real property annexed by such Supplemental Declaration.

2.5. **RELATIONSHIP TO OTHER GOVERNING DOCUMENTS.** If there are conflicts or inconsistencies between this 1st Restated Declaration and the Articles, Bylaws, Architectural Guidelines or Community Guidelines then the provisions of this 1st Restated Declaration shall prevail.

2.6. **SEVERABILITY.** The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision.

### 3. USE RESTRICTIONS

3.1. **RESIDENTIAL USE.** Each Residence shall be used only for (a) residential purposes, or (b) business or commercial activities authorized by this Section. Subject to Subsection 3.15 of this 1st Restated Declaration, an Owner may rent his Residence to a single Family provided that the Residence is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of the Governing Documents. Residences may only be used for business or commercial activities so long as the following requirements are met:

3.1.1. **Compliance with the Law.** The activities are conducted in conformance with all applicable Local Governmental Agency ordinances, including the City Code;

3.1.2. **Off Street Parking.** The patrons, clientele and employees are required to park off of streets and common areas within the Development;

3.1.3. **Exterior Effects.** The existence or operation of such activities does not produce sounds, odors or materials outside the boundaries of the Lot or Common Area that are excessive or inappropriate for a residential community;

3.1.4. **Consistent.** The activities are consistent with the character of the Development as a whole and conform to the other provisions of this 1st Restated Declaration, as determined by the Board.

3.1.5. **Offices operated by the Association,** for the sole purpose of managing the Association, are exempt from the restrictions contained in this Section.

3.1.6. **Except as authorized in this Section 3.1.,** no part of the Development may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is

compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license.

3.2. **NUISANCES.** No noxious or offensive activities may be carried on upon the Development or on any public street abutting or visible from the Development. No Owner may (a) permit or cause anything to be done or kept on the Development or on any public street abutting the Development which may (i) increase the rate of insurance in the Development, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other applicable governmental ordinances regarding occupancy and use of a Lot, including the Residence thereon. Each Owner is accountable to the Association and other Owners for the conduct and behavior of Persons residing in or visiting his Lot. The Association has the power to require that any damage to the Association Property, personal property of the Association, or property of another Owner caused by such Persons shall be repaired at the sole expense of the Owner of the Lot where such Persons are residing or visiting. The Association is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. The Board has the right to delegate responsibility for enforcing any of the restrictions on nuisances contained in this Section to the Owners. Any violation of this 1st Restated Declaration is a nuisance.

3.3. **SIGNS.** All signs, posters, billboards, balloon advertising devices and other displays of any kind must comply with City Code. In addition, they shall not be displayed within the Development except: a) signs of any size or configuration used by the Successor Declarants in connection with the development of the Development and the sale, lease or other disposition of Lots and the Annexable Territory, or b) entry monuments and similar community identification signs maintained by the Association, c) one (1) sign which may be displayed on each Lot advertising the Lot for sale or lease; however, such sign must comply with the Community Guidelines and Architectural Guidelines, and d) their displays such as decorative flags or holiday displays authorized in the Community Guidelines.

3.4. **AUTHORIZED VEHICLES.** The following vehicles are Authorized Vehicles: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Development intended for parking of motorized vehicles, subject to the restrictions in the other portions of the Governing Documents. No Owner may park any vehicle in a manner which extends beyond the boundaries of a parking space or into streets or sidewalks within the Development. The Association has the power to identify additional vehicles as Authorized Vehicles.

3.5. **RESTRICTED VEHICLES.** The following vehicles are Restricted Vehicles:

3.5.1. recreational vehicles (e.g., motor homes, travel trailers, camper vans, snowmobiles and boats),

3.5.2. commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks, and limousines),

3.5.3. buses or vans designed to accommodate more than ten (10) people (unless the vehicle is operated by the Association),

3.5.4. vehicles having more than two (2) axles,

3.5.5. trailers, inoperable vehicles or parts of vehicles,

3.5.6. aircraft or other similar vehicles, or

3.5.7. any vehicle or vehicular equipment deemed a nuisance by the Board.

3.6. **RESTRICTED VEHICLE LIMITATIONS.** Restricted Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Development or any other Association Property parking area unless (a) they are owned and used by the Association, (b) they are parked for limited periods in specified locations, as authorized in the Community Guidelines, or (c) they are parked within an Owner's fully enclosed garage with the door closed. If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Association has the power to identify additional vehicles as Restricted Vehicles. Some areas of the Development may be developed so that Prohibited Vehicles may be stored on Lots. These areas may be exempted from this restriction in the Supplemental Declarations for the areas.

3.7. **GENERAL RESTRICTIONS AS TO ALL VEHICLES.** No repair, maintenance or restoration of any vehicle may be conducted on the Development except as authorized by the Community Guidelines provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

3.8. **STREET REGULATIONS.** The Board may establish regulations in the Community Guidelines regarding any streets and off-street parking areas not assigned to individual Lots. These regulations may include setting speed limits, restricting types of vehicles that may be used in different areas, and requiring registration of vehicles or use of parking permits. The Association has the power, subject to the City Traffic Code, to enforce all parking and vehicle use regulations applicable to the Development, including removing violating vehicles from the Development without advance notice to the owner of the vehicle. Nothing in this Subsection shall be construed as prohibiting enforcement of City Code by the City.

3.9. **ANIMAL RESTRICTIONS.** The only pets that may be raised, bred or kept in the Development are animals that comply with the Community Guidelines and the City Code and that are either domestic dogs, cats, fish, birds and other usual household pets. Animals cannot be raised, bred or kept for commercial purposes in violation of the Governing Documents. The Board may prohibit any pet which, in the Board's opinion, constitutes a nuisance, or threat to the health, safety, or welfare of the community. Animals within the Development must be either kept within an enclosure or on a leash held by a Person capable of controlling the animal.

3.10. **EXTERIOR ITEMS.** Weeds, rubbish, debris, items designated as unsightly in the Community Guidelines and trash may not be kept or permitted upon the Development or on any public area abutting or visible from the Development. Trash may be kept in sanitary containers located in appropriate areas screened from view in accordance with the Community Guidelines and Architectural Guidelines, and no odor may be permitted to arise therefrom so as to render the Development or any portion thereof unsanitary, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Trash containers for individual Owners may be exposed to view only when set out for a reasonable period of time not to exceed twelve (12) hours before and after scheduled trash collection hours. Trash containers for the Association may be kept in the Common Area so long as they are contained within an enclosure installed by the Successor Declarants or approved by the ARC. No exterior fires are permitted, except barbecue fires contained within receptacles therefore and fire pits in enclosed areas and designed so that they do not create a fire hazard.

3.11. **TEMPORARY BUILDINGS.** Outbuildings, sheds, tents, shacks, or other temporary buildings or Improvements may not be placed upon any portion of the Development, without the prior written consent of the ARC. Garages, carports, trailers, campers, motor homes, recreation vehicles or other vehicles may not be used as a Residence in the Development.

3.12. **ALTERATION OF ASSOCIATION PROPERTY.** Owners shall not alter the Association Property without the prior written consent of the Board.

3.13. **INSTALLATIONS.** Projections of any type, except those allowed in this 1st Restated Declaration, are not permitted above the roof of any building within the Development, except chimneys and vent stacks originally installed, by the Successor Declarants. Portable and fixed basketball backboard and other sports apparatus are subject to regulation by the Community Guidelines. No fence or wall may be erected, altered or maintained around any Residence or on any Lot except with the ARC's prior approval. No patio cover, wiring, or air conditioning fixture, or other Improvement may be installed on the exterior of a Residence or be allowed to protrude through the walls or roof of the Residence except those items installed during the original construction of the Residence without the ARC's prior written approval.

3.14. **ANTENNAE AND SATELLITE DISHES.** Owners (excluding the Successor Declarants) are prohibited from placing any Telecommunications Facilities, or from permitting any Telecommunications Facilities to be placed, on any portion of the Development for any purpose, except for an "Approved Antenna," as is more fully defined below.

3.14.1. In order to preserve the aesthetic and visual integrity of the Development, but subject to any contrary provisions of applicable law, no Telecommunications Facilities, including but not limited to exterior radio antenna, television antenna, "C.B." antenna, satellite dish, over-the-air reception device, microwave transmitting shall be constructed, placed or maintained anywhere within the Development except as more fully set forth below.

3.14.2. Any Antenna equal to or less than one (1) meter in diameter, that falls within the scope of, or is otherwise covered by Telecommunications Act of 1995, and the provisions of 47 C.F.R. 1.400, as may be amended from time to time, or any subsequent federal or state law applicable to common-interest communities ("Approved Antenna"), shall be permitted upon any Lot, Association Property or Common Area. Installation of any Approved Antenna shall comply with any and all requirements and guidelines adopted by Washington City, as well as any and all applicable Architectural Guidelines or Community Guidelines.

3.15. **LEASING.** Any Owner may lease their Residence so long as it is done in compliance with all regulations and ordinances adopted by Washington City, as well as any and all applicable Community Guidelines.

3.15.1. **Liability of Owner for Tenant Conduct.** It shall be the obligation of any Owner who rents or leases his Residence to provide the tenant with copies of the Association's and any Governing Documents. It shall also be the obligation of any Owner to assure compliance with all of the covenants, conditions and restrictions in the Governing Documents. Notwithstanding the execution of a Lease, the Owner shall be fully responsible and liable to the Association for all violations of the Governing Documents by his tenants, and without limitation, shall be responsible for payment of any assessments or fines incurred by his tenants. A tenant shall have no obligation to the Association to pay assessments imposed by the Association.

3.15.2. **Entire Residence.** No Owner shall lease less than their entire Residence, including but not limited to, basements, rooms, garages, etc. No Owner may lease the exclusive use areas or restricted Common Areas the Owner has the exclusive right to use separate and apart from the Lot to which it is appurtenant, including but not limited to any assigned parking spaces.

3.16. **DRAINAGE.** Rain gutters, down spouts, drainage systems or the established drainage pattern for a Lot or Common Area originally installed or established by the Successor Declarants, may not

be altered or interfered with unless an adequate alternative provision is made with the Board's prior written approval, which must be consistent with the geotechnical report produced for the Development. "Established" drainage means the pattern and drainage Improvements which exist at the time that such Lot or Common Area is conveyed to a purchaser from the Successor Declarants, and includes drainage from the Lots, Common Area and Association Property onto adjacent Lots, Common Area and Association Property.

3.17. **VIEW OBSTRUCTIONS.** Each Owner acknowledges that any construction or installation by the Successor Declarants, or the Association may impair the view of such Owner and consents to such impairment. Each Owner acknowledges that there are no guaranteed views within the Development, and no Lot is assured the existence or unobstructed continuation of any particular view unless a Supplemental Declaration specifically provides otherwise.

3.18. **LANDSCAPING.** Each Owner shall install landscaping in their front yard and all areas of their lot that is visible from a street within 6 months of obtaining a certificate of occupancy from Washington City. Likewise, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations: (i) the Owner's Lot (including setback areas and any Common Areas located on such Lots); (ii) public right-of-way areas between sidewalks (or bike paths) and the street curb on the front or side of such Owner's Lot; (iii) public areas between a sidewalk and the Lot boundary; (iv) portions of Common Area adjacent to the Owner's Lot and which lie on the Lot's side of a wall erected on the Common Area; and (v) other public or easement areas adjacent to such Owner's Lot.

3.19. **NON-EXCESSIVE GARAGE STORAGE & GARAGE PARKING.** Owners shall keep their garages free of excessive storage such that vehicles utilized by the Owner, their guests or tenants may be parked therein at all times. All vehicles utilized the Owner, their guests or tenants shall not exceed the number of parking spots within the Plat's garage, driveway, or assigned parking stall (as the case may be).

3.20. **NON-TEMPORARY BLINDS OR WINDOW COVERINGS.** Within 30 days of occupancy of a Lot, Owners, their guests or tenants shall refrain from using temporary blinds or coverings over its windows such as sheets, newspapers, tin foil or other materials not intended to be as a window covering on a long-term basis.

#### 4. THE ASSOCIATION

*The success of the community is dependent upon the support and participation of each Owner in its governance and administration. This 1st Restated Declaration and the Association's Articles of Incorporation and Bylaws establish the Association as the mechanism through which each Owner is able to provide that support and participation. This Section briefly describes the organization of the Association, its powers, duties, authorized activities and prohibited activities. (These items are spelled out in detail in the Association's Articles of Incorporation and Bylaws.) This Section also identifies the standards of care used to govern the Development.*

4.1. **ORGANIZATION.** The homeowners association organized to manage and maintain the Development has been incorporated under the name of "Finley Farms Subdivision Association" as a "not for profit" corporation organized under the Utah Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-6a-101, et seq., as amended.

4.2. **DUTIES AND POWERS.** The Association has the duties and powers set forth in the Articles, Bylaws, this 1st Restated Declaration and the Supplemental Declarations, which include the general and implied powers of a nonprofit corporation, generally to do all things that a corporation organized under the laws of the State of Utah may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limit upon the exercise of such powers set forth in the Articles, Bylaws, this 1st Restated Declaration and the Supplemental

Declarations. Subject to Section 4.3 of this 1st Restated Declaration, the powers and duties of the Association include but are not limited to, the following:

4.2.1. Adopt and amend Community Guidelines for the use of the Common Areas and Association Property;

4.2.2. Adopt and amend Architectural Guidelines;

4.2.3. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expenses from the Owners;

4.2.4. Hire and discharge a Community Manager, employees, agents and independent contractors;

4.2.5. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Development;

4.2.6. Make contracts and incur liabilities;

4.2.7. Regulate the use, maintenance, repair, replacement and modification of Common Areas and Association Property;

4.2.8. Cause additional Improvements to be made as part of the Common Areas and Association Property;

4.2.9. Subject to applicable provisions of Utah law, acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;

4.2.10. Grant easements, leases, licenses and concessions through or over the Common Areas and Association Property;

4.2.11. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas or Association Property and for services provided to the Owners;

4.2.12. Impose charges for late payment of Assessments;

4.2.13. Impose construction penalties when authorized pursuant to the Architectural Guidelines;

4.2.14. Impose reasonable fines for violations of the Governing Documents of the Association;

4.2.15. Impose reasonable charges for the preparation and recordation of any amendments to the 1st Restated Declaration or any statements of unpaid Assessments, and impose reasonable fees for preparing and furnishing the documents for resale of any Lot in the Development.

4.2.16. Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance.

4.2.17. Assign its right to future income, including the right to receive Assessments for Common Expenses, but only to the extent the 1st Restated Declaration expressly so provides;

4.2.18. Exercise any other powers conferred by this 1st Restated Declaration or the Bylaws;

4.2.19. Subject to applicable provisions of Utah law, direct the removal of vehicles improperly parked on the Association Property or Common Areas or improperly parked on any road, street, alley or other thoroughfare within the Development and subject to the 1st Restated Declaration, in violation of the Governing Documents.

4.2.20. Exercise any other powers necessary and proper for the governance and operation of the Association.

4.2.21. All of the Association's powers shall be exercised by its Board of Directors except those powers reserved in specific provisions of the Articles, Bylaws, this 1st Restated Declaration or the Supplemental Declarations to the Members or Architectural Review Committee.

4.3. **SPECIFIC DUTIES AND POWERS OF ASSOCIATION.** In addition to its general powers and duties, the Association has the specific powers and duties listed in the Articles and Bylaws, some of which are summarized below:

4.3.1. **Association Property.** The power and duty to accept, maintain and manage the Association Property.

4.3.2. **Common Areas.** The duty to maintain and manage Common Areas.

4.3.3. **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems and any private storm drains or drainage facilities within the Association Property if the drains and systems are not maintained by a local governmental agency or a utility company.

4.3.4. **Utilities.** The power and duty to obtain, for the benefit of the Development, all commonly metered water, gas and electric services, and the power but not the duty to provide for refuse collection and other utilities serving Lots if the utilities are not individually metered.

4.3.5. **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in portions of the Association Property, to the extent any such grant is reasonably required (i) for public or private utilities facilities to serve the Association Property, Common Area and the Lots, (ii) for purposes of conformity with the as-built location of Improvements installed by the Successor Declarants, (iii) in connection with any lawful lot line adjustment, (iv) for purposes consistent with the intended use of the Development as a planned community, or (v) for any other purpose permitted under this 1st Restated Declaration. Any easement grants made pursuant to this Section shall not interfere with previously designated utility easements.

4.3.6. **Right of Entry.** The power but not the duty to enter upon any Lot, or Common Area, as necessary, for the purpose of inspecting any portion of the Development and to enforce the Governing Documents.

4.4. **COMMENCEMENT OF ASSOCIATION PROPERTY MAINTENANCE OBLIGATIONS.** The Association's obligation to maintain the Association Property and certain Common Areas shall commence on conveyance of such property to the Association. The Successor Declarants shall be responsible for paying all expenses related to the Association Property which are incurred before or simultaneously with the conveyance of the Association Property to the Association. The initial nature,

design, quantity, quality and all other attributes of the Association Property shall be determined in the Successor Declarants' sole and absolute discretion.

4.5. **CONVEYANCE OF ASSOCIATION PROPERTY.** Within every Phase, conveyance of any Association Property to the Association shall occur before the first Close of Escrow for a Lot in such Phase, or The Association must accept title to and maintenance responsibility for each portion of Association Property when title and maintenance responsibility is tendered by the Successor Declarants.

## 5. DESIGN CONTROL

*Jurisdiction over design, construction and aesthetic aspects of the Development is given to the Architectural Review Committee. The Architectural Review Committee is a three to five person committee initially appointed by the Successor Declarants and eventually appointed by the Board of Directors of the Association. The Architectural Review Committee must approve all plans for architectural or landscaping modifications in the Development before the modifications are made. The Architectural Review Committee also has the right to review modifications as they are constructed and give final approval of completed modifications. In addition to establishing the Architectural Review Committee, this Section establishes the procedures for pre-approving certain Improvements, granting variances and appealing decisions of the Architectural Review Committee.*

5.1. **MEMBERS OF COMMITTEE.** The Architectural Review Committee ("ARC") shall be composed of no fewer than three (3) nor more than five (5) members, with the exact number of members set by the Board. The ARC has the right to recommend adoption of Architectural Guidelines or amendments thereto, containing standards, guidelines, procedures and rules, against which to examine any request made pursuant to this Section. The Board of Directors shall act on any recommendation made by the ARC and is responsible for adopting and amending the Architectural Guidelines. Board members may also serve as Architectural Review Committee members.

5.2. **POWERS AND DUTIES.** The ARC shall consider and act upon all plans and specifications submitted for its approval under the Governing Documents, including inspection of work in progress to assure conformance with plans approved by the Architectural Review Committee, and shall perform such other duties as the Board assigns to it. The ARC shall not have the power to enforce the Governing Documents. This power is reserved to the Board. The Board of Directors shall issue, regularly review, and, if necessary, amend its Community and Architectural Guidelines. The Architectural Guidelines and all changes thereto must be approved by the Board. The Architectural Guidelines shall include procedures for submitting plans for approval, may require a fee to accompany each application for approval, and may identify additional factors which the ARC will consider in reviewing submissions. The ARC may provide that fees it imposes be uniform, or that fees will be determined in any other reasonable manner, such as by the reasonable cost of consultants or the cost of the construction, alterations or installations contemplated. The ARC may charge applicants for the cost of consultants the Architectural Review Committee uses in reviewing applications. The ARC may require such detail in plans and specifications submitted for its review as it deems proper. The Board of Directors has the power but not the duty to retain Persons to advise the ARC in connection with decisions; however, the Architectural Review Committee does not have the power to delegate its decision-making power.

### 5.3. RIGHTS OF APPOINTMENT OF MEMBERS OF THE ARC.

5.3.1. By the Successor Declarants. The members of the ARC shall be appointed by the Successor Declarants until Close of Escrow for all of the Lots in the Development and the Annexable Area, after which time, members of the ARC shall be appointed by the Board. ARC members appointed by the Board must be Members, but ARC members appointed by the Successor Declarants are not subject to this limit. The Successor Declarants may, by written assignment, at any time, transfer its right to appoint one or more ARC members to the Board.



5.3.2. By the Board. Subject to Section 5.3.1 above, the Board may appoint and remove those members of the ARC that the Successor Declarants do not appoint. ARC members appointed by the Board shall serve for terms determined by the Board or until their respective successors are appointed.

5.3.3. Notice of Appointment. If an ARC member is appointed or removed while both the Successor Declarants and the Board have rights of appointment, written notice of such appointment or removal must be given by the appointing party to the other party.

5.4. **REVIEW OF PLANS AND SPECIFICATIONS.** No exterior construction, installation or alteration of an Improvement in the Development by an Owner may be commenced until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the ARC; however, any Improvement may be repainted without ARC approval so long as the Improvement is repainted its original color or another color that has been approved by the ARC.

5.5. **APPLICATION PROCEDURE.** Until changed by the Board, the address for submission of plans and specifications is the Association's principal office. The form of application used by the ARC shall be determined by the Board of Directors and shall include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Board of Directors shall establish a definition of "Adjacent Owners" in its Architectural Guidelines for use by the ARC. Applications will be complete even if all of the Adjacent Owners do not initial the applications so long as the Applicant states in writing to the Board that the Applicant requested that the Adjacent Owners sign the applications. The Board of Directors shall determine the meaning of Adjacent Owners in the Architectural Guidelines. If the ARC receives plans and specifications it determines are not complete, the ARC may reject the application. The ARC shall give notice of its decision and the reasons therefore to the Owner submitting the plans and specifications ("Applicant") at the address set forth in the application within forty-five (45) days after the ARC receives all required materials and information. Any application submitted shall be deemed denied if the ARC fails to transmit written approval or a request for additional information or materials to the Applicant within forty-five (45) days after the ARC receives all required material. No construction or installation shall commence until written approval is obtained from the ARC.

5.6. **STANDARD FOR APPROVAL.** The ARC shall approve plans and specifications submitted for its approval only if it determines that:

5.6.1. the installation, construction or alteration contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Development as a whole,

5.6.2. the appearance of any structure affected thereby will be in harmony with the surrounding structures,

5.6.3. the installation, construction or alteration will not detract from the beauty and attractiveness of the Association Property or the enjoyment thereof by the Members,

5.6.4. if applicable, the maintenance thereof will not become a burden on the Association, and

5.6.5. the installation, construction or alteration is consistent with the Architectural Guidelines.

5.7. **CONDITIONAL ARC APPROVAL.** The ARC may condition its approval of plans and specifications for any Improvement.

5.8. **ARC'S AUTHORITY.** The ARC is the final arbiter of all design approvals within the Development.

5.9. **MEETINGS OF THE ARC.** The ARC shall meet as necessary to perform its duties. The vote or written consent of a majority of the ARC constitutes an act of the Architectural Review Committee.

5.10. **NO WAIVER OF FUTURE APPROVALS.** The ARC's approval of any plans and specifications for any work done or proposed or in connection with any matter requiring the Architectural Review Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications subsequently submitted for approval.

5.11. **COMPENSATION OF ARC MEMBERS.** ARC members shall receive no compensation for services rendered, other than reimbursement for reasonable expenses incurred in performing their duties.

5.12. **INSPECTION OF WORK.** The ARC or its duly authorized representative may inspect any work for which approval of plans is required under this Section ("Work"). The right to inspect includes the right to require any Owner to take such action as is necessary to remedy any noncompliance with the ARC approved plans consistent with governmental approvals for the Work or with the requirements of the Governing Documents ("Noncompliance"). The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the ARC has received written notice from the Owner that the Work is complete. If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notification of Noncompliance from the ARC, ARC shall notify the Board in writing of such failure, and the Association shall proceed in accordance with Section 13 of this 1st Restated Declaration.

5.13. **SCOPE OF REVIEW.** Subject to Section above, the ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed construction, installation or alteration solely on the basis of aesthetic considerations, consistency with the Governing Documents, height of landscaping materials at maturity, and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The ARC shall consider the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with law.

5.14. **APPEALS OF ARCHITECTURAL DECISIONS.** Only an Applicant may appeal rejection of an application. Subject to the policies and procedures adopted by the Board, the Applicant has the right to appeal decisions by the ARC to the Board of Directors of the Association. The ARC is only responsible for ensuring that the Applicant is advised of its decision. Decisions made by the Association Board are not appealable. This limit on appeals from Association Board decisions is not a limit on the Association Board's ability to amend or modify a decision it has issued under circumstances it considers appropriate. The Board shall further adopt policies and procedures for appeals of ARC decisions.

## 6. OWNERS' MEMBERSHIP AND VOTING RIGHTS

*Each Person who purchases a Lot in the Development becomes a Member of the Association with certain rights and privileges. Membership rights, limits on Memberships and transfer of Memberships, voting rights and rights of co-owners are all described in detail in the Articles and Bylaws. Some Membership information is summarized here. The Successor Declarants' veto rights are also described in this Section. The Successor Declarants are given the right to veto certain actions by the Association because of the*

*Declarants' long term financial and philosophical commitment to development of the Development. As described in the Articles and Bylaws, the Successor Declarants have the unilateral right to appoint a majority of the Directors of the Association. This system is used to allow the Successor Declarants, who will be extensively involved in the Development for a long period of time, to ensure that the Association fulfills its purposes.*

6.1. **MEMBERSHIP INFORMATION.** Every Owner automatically acquires Membership and retains the Membership until the Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Neither the issuance nor the holding of shares of stock is necessary to evidence Membership in the Association. The classes of voting Membership shall be as set forth and described in the Bylaws. All Memberships in the Association are appurtenant to the Lots and shall not be separated from the Lot to which the Memberships appertain.

6.2. **DECLARANT'S VETO RIGHT.** So long as one of the Successor Declarants own any portion of the Development or Annexable Territory, the Successor Declarants have a right to veto any of the actions listed in Section 4.2 and 4.3 if proposed to be taken by the Association. This right shall terminate on the date on which the Successor Declarants no longer owns or has a Mortgage interest in any portion of the Development or Annexable Territory.

## 7. OWNERS' PROPERTY RIGHTS AND PROPERTY EASEMENTS

*Living or working in a planned community involves sharing and cooperation. The various types of properties and uses in the Development require the creation of special property rights and provisions to address the needs of the variety of Persons living and working in the Development. The property rights acquired by Owners and other Persons are described in this Section along with limits on the exercise of those rights.*

7.1. **OWNERS' EASEMENT OF ENJOYMENT OVER ASSOCIATION PROPERTY.** Every Owner has a right and easement of ingress and egress and of enjoyment in, to and over the Association Property, and such easement is appurtenant to and shall pass with title to every Lot.

7.2. **EASEMENTS FOR VEHICULAR/PEDESTRIAN TRAFFIC.** The Successor Declarants reserves, for the benefit of all Owners, nonexclusive easements appurtenant to all the Lots and Common Area in the Development for vehicular and pedestrian traffic over the private streets and walkways within the Association Property, subject to the parking and street restrictions in Section 3, above.

7.3. **EASEMENTS FOR EMERGENCY VEHICULAR ACCESS AND PUBLIC SERVICE PURPOSES.** The Successor Declarants reserve easements over the Development for public services of the Local Government Agencies, including the right of law enforcement and fire protection personnel to enter upon any part of the Development for the purpose of carrying out their official duties and for emergency vehicle access.

7.4. **EASEMENTS FOR PRIVATE AND PUBLIC UTILITY PURPOSES.** The Successor Declarants reserve easements over the Association Property for public and private utility purposes, including the right of any public utility of access over the Association Property for purposes of reading and maintaining meters, and using and maintaining fire hydrants located in the Development. The Successor Declarants also reserves reciprocal, nonexclusive easements over all Lots, Common Area and the Association Property, for installation and maintenance of utility Improvements.

7.5. **EASEMENT FOR SUCCESSOR DECLARANTS.** The Successor Declarants reserves for their benefit and the benefit of their agents, employees, contractors, customers and invitees and for the benefit of their successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, over the Association Property, for access, use and enjoyment, to show the Development and Annexable

Territory to prospective purchasers, or to develop, market, sell, lease or otherwise dispose of the Development and the Annexable Territory. Such easement shall continue for so long as the Successor Declarants own any portion of the Development or the Annexable Territory.

**7.6. TELECOMMUNICATIONS EASEMENTS.** The term “Telecommunication Easement Area” used in this Section means the Common Area, Association Property and the portion of each Lot with a width measured from each Lot line and extending two feet into the Lot and with a length equal to each Lot line. To the maximum extent allowed by law, the Successor Declarants except and reserve from the Telecommunication Easement Area and retains the right to transfer and assign exclusive and nonexclusive easements in gross for the purposes of installing, maintaining, operating and relocating Telecommunication Facilities and conducting Telecommunication Services in the Development. The Successor Declarants also reserve, together with the right to grant and transfer all or a portion of the same, exclusive and nonexclusive easements in gross over and under the Telecommunication Easement Area for the purpose of access for the Telecommunication Services and to the Telecommunication Facilities. The easements reserved in this Section are referred to as “Telecommunication Easements.”

**7.6.1. Rights in Connection with Telecommunication Easements.** The holder of any Telecommunication Easements has the right to trim and remove landscaping whenever, in easement holder’s reasonable judgment, it is necessary for the convenient and safe use of the Telecommunication Easements. The Telecommunication Facilities will not be deemed to be affixed to or a fixture of the Development unless otherwise indicated in a Recorded instrument. No one other than the holder of the Telecommunication Easements has the right to access, operate, or move the Telecommunication Facilities.

**7.6.2. Limits on Use of the Development.** No Person shall alter any Telecommunication Facilities without the prior consent of owner of the Telecommunication Facilities. No Person shall grant or dedicate any easements, licenses or other rights on, across, under or over or affecting the Development that interfere, compete or conflict with the terms of any Recorded grants of Telecommunication Easements. The Association and the Owners shall execute and allow to be Recorded against the Development such documents as are reasonably required in connection with exercise or protection of rights as established in a Recorded grant of Telecommunication Easements.

**7.7. PHASE 1B WATER DETENTION EASEMENTS.** The Successor Declarants hereby reserve, for the benefit of the Owners of Lots within Phase 3 of the Development, the following perpetual, non-exclusive, appurtenant easements over, across and under Phase 1B of the Development:

**7.7.1. Drainage Facilities Easement.** A perpetual, non-exclusive, appurtenant easement for the use, connection, improvement, repair, maintenance, and reconstruction of water conveyance or drainage facilities (including without limitation underground and above-ground pipes, ditches, swales, culverts, catch basins, manholes and related structures) (collectively, the “Drainage Facilities”), as such may be actually installed on Phase 1B.

**7.7.2. Detention Pond Easement.** A perpetual, non-exclusive, appurtenant easement for the use, connection, improvement, repair, maintenance, and reconstruction of the detention ponds and all appurtenant structures and facilities (collectively, the “Detention Pond”), to which the Drainage Facilities connect, as such may be actually installed in the locations generally depicted on the final Plat for Phase 1B. The rights granted, created, and conveyed hereunder shall expressly include the right to drain, convey and discharge, both detained and free-flowing rainwater, surface water, groundwater and other waters through the Drainage Facilities into the Detention Pond, and from the Detention Pond through the Drainage Facilities to their ultimate outlet.

7.7.3. **Cost Sharing.** Lots within Phases 1B and 3 shall constitute a Special Benefit Area for purposes of allocating all costs incurred in connection with the use, operation, maintenance, repair, reconstruction and replacement of the Drainage Facilities and the Detention Pond. All such costs shall be funded through Special Benefit Area Components as determined by the Association.

7.8. **MISCELLANEOUS EASEMENTS.** The Successor Declarants reserve the following easements, along with the right to transfer them, for the benefit of all of the Development, and for the benefit of all of the Owners:

7.8.1. **Drainage.** Reciprocal, nonexclusive easements for drainage of water over, across and upon Lots, Common Areas and Association Property (excluding the buildings and areas proposed to include a building) resulting from the normal use of the Lots, Common Areas or Association Property.

7.8.2. **Maintenance and Repair.** Nonexclusive easements over the Development for access to perform necessary maintenance, repair or replacement of any Improvement constructed by the Successor Declarants.

7.8.3. **Easements on Plats.** Easements as shown on any Recorded subdivision plat of any portion of the Development.

7.9. **DELEGATION OF USE.** Any Owner may delegate the Owner's right to use the Association Property to such Owner's tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to reasonable regulation by the Board.

7.10. **WAIVER OF USE.** No Owner may exempt himself from personal liability for Assessments levied by the Association, nor release his Lot from the liens and charges hereof, by waiving use of the Association Property or any facilities thereon or by abandoning such Owner's Lot.

7.11. **RIGHT TO GRANT ADDITIONAL EASEMENTS.** The Successor Declarants reserve easements over the Association Property for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, or landscaping area. Any such easement may be transferred by the Successor Declarants prior to conveying the last Lot in the Development and the Annexable Territory. The transfer must be approved in advance by the Board. The purpose of the easement, the portion of the Association Property affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in the Recorded document used to transfer the easement. Nothing in this 1st Restated Declaration shall be construed as giving the Successor Declarants the right to alter existing utility easements.

## 8. ASSESSMENT COLLECTION.

*One of the obligations of Owners is to contribute financially to support the operations of the Association. The Association funds its operations through collection of different kinds of assessments: Common Assessments, Capital Improvement Assessments, Reconstruction Assessments, Compliance Assessments and Transfer Fees. This Section describes how the different types of assessments are collected and used by the Association. This Section also sets limits on the amount of certain assessments that can be charged to Owners.*

8.1. **CREATION OF ASSESSMENT OBLIGATION.** Each Owner of a Lot (except for the Successor Declarants) is deemed to covenant to pay to the Association (a) Common Assessments, (b) Capital Improvement Assessments, (c) Compliance Assessments, and (d) Reconstruction Assessments. All Assessments, together with interest, late fees, costs, transfer fees and reasonable attorneys' fees for the collection thereof, are a charge and shall be and become a lien upon the Lot against which such Assessment

is made. Each Assessment, together with interest, late fees, costs, transfer fees and reasonable attorneys' fees, is also the personal obligation of the Owner of the Lot at the time when the Assessment fell due. No Owner may except himself from liability for his Assessment obligation by any waiver of the use or enjoyment of, or by the abandonment of his portion of the Development, but an Owner will not be liable for Assessments accruing after consummation of a transfer of his portion of the Development accomplished in accordance herewith.

**8.2. MAINTENANCE FUNDS.** The Maintenance Funds may be established as trust accounts at a banking or savings institution and may be combined so long as the funds are treated as separate funds for accounting purposes. The Board shall budget, establish and keep at least the following accounts (the "Maintenance Funds"):

**8.2.1. General Operating Fund.** A General Operating Fund for current expenses of the Association, exclusive of current expenses attributable to the Special Benefit Areas, if any.

**8.2.2. General Reserve Fund.** General Reserve Fund for the deposit of Reserves, exclusive of Reserves attributable to the Special Benefit Areas, if any.

**8.2.3. Special Benefit Area Operating Fund.** For each Special Benefit Area, if any, a separate Special Benefit Area Operating Fund for current expenses of the Special Benefit Area.

**8.2.4. Special Benefit Area Reserve Fund.** For each Special Benefit Area, if any, a separate Special Benefit Area Reserve Fund for the deposit of Reserves attributable to the Special Benefit Area.

**8.2.5. Miscellaneous Maintenance Funds.** Other Maintenance Funds as the Board deems necessary.

**8.3. PURPOSE OF ASSESSMENTS.** Assessments and any other amounts deposited into the Maintenance Funds shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) improve and maintain the Association Property, and (c) discharge any other Association obligations. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

**8.3.1. General Operations.** Disbursements from the General Operating Fund shall be made for payment of Common Expenses which are not budgeted to a Special Benefit Area.

**8.3.2. General Reserves.** Disbursements from the General Reserve Fund shall be made solely for payment of those Reserve expenditures which are not budgeted to a Special Benefit Area.

**8.3.3. Special Benefit Area Operations.** Disbursements from each Special Benefit Area Operating Fund shall be made solely for payment of the current operating Common Expenses of the Special Benefit Area for which the fund was created.

**8.3.4. Special Benefit Area Reserves.** Disbursements from each Special Benefit Area Reserve Fund shall be made solely for payment of Reserve expenditures attributable to the Special Benefit Area for which the fund was created.

**8.4. ASSESSMENT COMPONENTS, RATES AND EXEMPTIONS.** Each annual Common Assessment is an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts of prospective deposits into the General Operating and Reserve Funds, Special Benefit Area Operating and Reserve Funds, and other Maintenance Funds established by the Association. Common Assessments shall be assessed against the Owners of Lots as follows:

8.4.1. **Assessment Units.** Each Owner shall equally pay to the Association a proportionate share of all Assessments provided for in this 1st Restated Declaration, as may be amended from time to time.

8.4.2. **General Assessment Component.** The General Assessment Component is composed of Common Expenses of the Association exclusive of Common Expenses Budgeted to the Special Benefit Areas and shall be allocated among all of the Lots. The proportionate share of the General Assessment Component of Common Expenses chargeable to Lots shall be a fraction, the numerator of which shall be the number of Assessment Units allocated to such Lot, and the denominator of which shall be the total number of Assessment Units allocated to the Development.

8.4.3. **Special Benefit Area Assessment Component.** The Special Benefit Area Assessment Component is that portion of the Common Expenses of the Association composed of Special Benefit Area Operating and Reserve Funds Budgeted exclusively to any particular Special Benefit Area and shall be assessed to the Lots designated in a Supplemental Declaration as Lots to which the exclusive or disproportionate maintenance of such Special Benefit Area has been allocated. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Special Benefit Area Assessment Component of Common Expenses chargeable to each Lot located in such Special Benefit Area shall be a fraction, the numerator of which shall be the number of Assessment Units allocated to the Lot in the Special Benefit Area, and the denominator of which shall be the total number of Assessment Units allocated to all Lots located in such Special Benefit Area.

8.4.4. **Excess Funds.** During the term of any subsidy agreement between the Successor Declarants and the Association, all funds remaining in the Maintenance Funds in excess of the amounts used for the operation and payment of Common Expenses of the Development (including Reserves) shall be accumulated to fund future Maintenance Fund deficits. After the termination of any subsidy agreement, the Board of Directors may determine that funds remaining in the Operating Funds, in excess of the amounts used for the operation of the Development, may, in the discretion of the Board, be used to reduce the following year's Common Assessment attributable to such Maintenance Funds or transferred into the Reserve Fund.

8.5. **LIMIT ON COMMON ASSESSMENT INCREASES.** During the Fiscal Year in which Common Assessments commence, the Board may increase the General Assessment Component by more than twenty percent (20%) of the General Assessment Component disclosed for the Development in the previous year's Budget. After the Fiscal Year in which Common Assessments commence, the Board may unilaterally increase the General Assessment Component up to twenty percent (20%) of the General Assessment Component for the immediately preceding Fiscal Year.

8.6. **INCREASES IN THE SPECIAL BENEFIT AREA COMPONENT.** During and after the Fiscal Year in which Common Assessments commence, the Board may increase any Special Benefit Area Component by more than twenty percent (20%) of the Special Benefit Area Component disclosed for the Development in the Budget provided by the Successor Declarants on the first Close of Escrow in the Development only if the Board first obtains the approval of a majority of the Members representing the Lots in the Special Benefit Area. After the Fiscal Year in which Common Assessments commence, the Board may unilaterally increase any Special Benefit Area Component up to twenty percent (20%) of the Special Benefit Area Component for the immediately preceding Fiscal Year.

8.7. **PROVISIONS APPLICABLE TO ALL COMPONENTS OF COMMON ASSESSMENTS.**

8.7.1. **Supplemental Common Assessments.** If the Board determines that Common Expenses may be properly paid by collection of a Common Assessment in an amount less than the maximum authorized Common Assessment, the Board may levy a Common Assessment which is less than the maximum authorized amount. If the Board determines that the Common Assessment being collected is or will become inadequate to pay all Common Expenses, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Common Assessment, subject to the limitations described in Section 8.5 above.

8.7.2. **Automatic Assessment Increases.** Notwithstanding any other provisions of this Section, upon annexation of any portion of the Annexable Territory, the Common Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Association Property. To minimize the need for frequent adjustments in the amount of the Common Assessments during the development of the Development, the Board may level the amount of the Common Assessments invoiced to the Owners an amount calculated to defray the Common Expenses of the Association during the time that Common Assessments are fluctuating due to the periodic annexation of Lots and Association Property.

8.8. **SPECIAL ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment (each, a "Special Assessment") for purposes of this Section applicable to that Fiscal Year only for purposes authorized in this 1st Restated Declaration or any Supplemental Declaration.

8.8.1. **Limit Outside of Special Benefit Areas.** No Special Assessment in any Fiscal Year for an Improvement not included in a Special Benefit Area which, if added to the Special Assessments already levied during such Fiscal Year (excluding Special Assessments for Special Benefit Areas), exceed ten percent (10%) of the Association's Budgeted gross expenses for such Fiscal Year (excluding Budgeted gross expenses for Special Benefit Areas), may be levied without the approval of a majority of the Owners of Lots within the Special Benefit Area.

8.8.2. **Limit for Special Benefit Areas.** No Special Assessments in any Fiscal Year for an Improvement in a Special Benefit Area which, if added to the Special Assessments already levied during such Fiscal Year solely for that Special Benefit Area, exceed ten percent (10%) of the Association's Budgeted gross expenses for the Special Benefit Area for such Fiscal Year, may be levied without the approval of a majority of the Owners of Lots within the Special Benefit Area.

8.9. **COMMENCEMENT OF COMMON ASSESSMENTS.** Common Assessments shall commence as to each Lot in any Phase containing Residential Area on the first day of the first month after the Close of Escrow in such Phase. Assessments shall commence as to each Lot on the later to occur of (i) following the issuance of a temporary or final certificate of occupancy by applicable Local Governmental Agency, or (ii) the day such Phase becomes subject to this 1st Restated Declaration.

8.10. **COLLECTION OF COMMON ASSESSMENTS.** The Board shall fix the amount of the Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Common Assessments shall be calculated annually based on a budget adopted at least annually by the Association in accordance with any requirements, if any, imposed by Utah law. The Board may at any time ratably increase or decrease the Common Assessments to such levels as shall be reasonably necessary in the judgment of the Association Board to cover the obligations of the Association hereunder, including provision for reasonable reserves for replacements. The Association is obligated to maintain Common Assessments at a level sufficient to enable payment of all costs of maintenance of the Common Areas. Written notice of any change in the amount of any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) days prior to the increased Assessment becoming due. The Association may use any method of collecting Assessments allowed by law including charging credit cards or electronic transfers. At the



Association's discretion, the additional cost of any method of collection may be collected from the Owner electing the method of collection and does not have to be divided equally among all Owners.

**8.11. EXEMPT PROPERTY.** The following property is exempt from the obligation to pay Assessments:

**8.11.1. Public Property.** All portions of the Development dedicated to and accepted by a Local government agency.

**8.11.2. Association Property.** The Association Property.

**8.11.3. Common Area.** All Common Area.

**8.11.4. Other.** Any areas exempted from Assessments in a Supplemental Declaration.

**8.12. CAPITALIZATION OF ASSOCIATION.** Upon the sale of a Lot by the Successor Declarants or to an Owner other than the Successor Declarants, the Owner shall be obligated to pay the Association an amount equal to two (2) months Common Assessments in proportion to their respective liabilities for Common Expenses (the "Transfer Fee"). The Transfer Fee shall be collected from the Owner at the Close of Escrow for the purchase of the Lot. This Transfer Fee provision shall not be considered as an advance payment of Assessments. Each Lot's Transfer Fee may be collected and then contributed to the Association by the Successor Declarants. Upon the sale of a Lot by an Owner other than the Successor Declarants, each new Owner shall be obligated to pay to the Association a Transfer Fee, as defined in this Section. The Transfer Fee shall be deposited by the purchaser (prospective Owner) into the purchase and sale escrow and distributed therefrom, at the Close of Escrow to the Association. Until paid to the Association, the Transfer Fee due pursuant to this provision shall be considered an unpaid Common Assessment, with a lien on the new Owners Lot.

**8.13. RESERVE ACCOUNT STUDY.** At least once every five (5) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

**8.13.1.** Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

**8.13.2.** Identification of the probable remaining useful life of the components identified in subparagraph 8.13.1, above, as of the date of the study.

**8.13.3.** An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subparagraph 8.13.1, above, during and at the end of its useful life.

**8.13.4.** An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

**8.13.5.** For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

## 9. OWNER MAINTENANCE OBLIGATIONS.

*To protect the aesthetics of the Development, the Successor Declarants has established standards for maintaining the various types of property in the Development. This Section describes these standards.*

9.1. **MAINTENANCE OBLIGATIONS OF OWNERS.** Each Owner of a Lot shall maintain his Lot in accordance with this Section unless this Section is explicitly superseded in a Supplemental Declaration.

9.1.1. **General Responsibilities – Lots.** Each Owner, at the Owner's sole expense, shall maintain and restore all Improvements located on the Owner's Lot and the Lot itself, in a neat, sanitary and attractive condition. Such maintenance responsibilities include the maintenance of the entire Residence on the Lot, as well as any fence or wall constructed on the Lot along the Lot line abutting any Association Property. Each Owner whose Lot uses a private drainage system installed by the Successor Declarants is responsible for its maintenance. Each Owner whose Lot uses a sewer system lateral, water system lateral, or any other utility line exclusively servicing the Lot, is responsible for the maintenance of that portion of the lateral which exclusively serves such Owner's Lot. Each Owner is also responsible for maintaining the mailbox that serves the Owner's Lot. If any Owner permits any Improvement which such Owner is responsible for maintaining to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate the Governing Documents, the Board may seek any remedies at law or in equity which it may have. In addition, the Board may, after Notice and Hearing, enter upon such Owner's Lot to perform such maintenance and charge the cost thereof to the Owner as a Compliance Assessment.

9.1.2. **Additional Insurance Obligations.** Each Owner is also responsible for carrying public liability insurance in the amount such Owner deems desirable to cover such Owner's individual liability for damage to person or property occurring inside such Owner's Residence or elsewhere upon such Owner's Lot.

9.2. **DAMAGE TO IMPROVEMENTS-RECONSTRUCTION.** If all or any portion of any Lot or improvements thereon damaged or destroyed by fire or other casualty, the Owner of such Lot shall either (i) rebuild, repair or reconstruct the Lot and the home thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ARC, or (ii) install landscaping on the Lot without rebuilding the Residence as approved by the ARC. The Owner of any damaged Lot and the ARC shall proceed with all due diligence. The Owner shall cause construction or landscaping to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete construction or landscaping in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such construction in less than thirty (30) days from the date such transferee acquired title to the Lot.

9.3. **PARTY WALLS.** Each wall or fence which is placed on the dividing line between the Lots is a "Party Wall". The cost of the initial installation, reasonable maintenance, and subsequent replacement of a Party Wall shall be shared equally by the Owners of the Lots divided by the Party Wall. However, each Owner is responsible for repainting the side of any Party Wall facing his Lot. If a Party Wall is destroyed or damaged, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration. An Owner who by his negligent or willful act causes a Party Wall to require repair or replacement shall bear the whole cost of the necessary repairs or replacement. The right of any Owner to contribution from any other Owner under this Subsection is appurtenant to each Owner's Lot and passes to such Owner's successors in title. An Owner's contribution to the initial installation of a Party Wall shall be made within twelve (12) months

from the date of completion of work. All other contributions for maintenance, restoration, or subsequent replacement shall be made within sixty (60) days from completion of work. If an Owner fails to make his contribution, the harmed Owner shall have the right to initiate a legal or equitable action to recover the monies owed. The Association shall not be party to an action to collect contributions for Party Walls.

#### 9.4. MAINTENANCE OBLIGATIONS OF THE ASSOCIATION.

9.4.1. Responsibilities. The Association shall maintain all Improvements on the Association Property in an attractive condition and in good order and repair. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property. The Association may add or remove any landscaping Improvements to or from the Association Property and shall keep the landscaping thereon free of weeds and disease.

9.4.2. Inspection. The Board shall have the Association Property and all Improvements thereon inspected at least once every year in order to (a) determine whether the Association Property is being maintained in accordance with the standards of maintenance established in the Governing Documents, (b) determine the condition of the Association Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential maintenance costs to be incurred in the future. The Board shall keep the Successor Declarants fully informed of the Board's activities under this Section. The Board may employ such experts and consultants as necessary to perform the inspection and make the report required by this Section. The Board shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners and to the Successor Declarants within the time set forth for furnishing Owners with the Budget. The report must include at least the following: a) description of the condition of the Association Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items, b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget, c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral, d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections, e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and f) such other matters as the Board deems appropriate.

9.4.3. Damage to Association Property. After Notice and Hearing, the Board may levy the cost of any maintenance, repairs and replacements by the Association within the Association Property arising out of or caused by the willful or negligent act of an Owner, or other Person as a Compliance Assessment against the responsible Owner, or Person.

#### 10. DAMAGE AND CONDEMNATION OF ASSOCIATION PROPERTY.

*This Section establishes the procedure for repairing or reconstructing damaged Association Property and for obtaining funds from condemnation of Association Property.*

10.1. REPAIR AND RECONSTRUCTION. If the Association Property is damaged or destroyed, the Association shall cause the Association Property to be repaired and reconstructed in accordance with plans and specifications approved by the Board. If the cost of effecting total restoration of the Association Property exceeds the available insurance proceeds, then the Association shall levy a Reconstruction Assessment against the Lots and their respective Owners equal to the difference between the total restoration cost and the insurance proceeds.

10.2. OWNERS' RESPONSIBILITIES. Each Owner is liable to the Association for all expenses of repairing damage to the Association Property which may be sustained due to the negligence or willful

misconduct of said Owner or the Persons deriving their right to use the Association Property from said Owner. The Association may, after Notice and Hearing, (i) charge the Owner for the cost of repairing the damage, (ii) determine whether any claim shall be made upon the insurance kept by the Association and (iii) levy against such Owner a charge equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be responsible. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

10.3. **EMINENT DOMAIN.** If all or any portion of the Association Property is taken by exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation shall be paid to the Association and deposited in the Operating Fund. No Owner may participate as a party, or otherwise, in any proceedings relating to such condemnation.

## 11. INSURANCE OBLIGATIONS.

*This Section establishes minimum requirements for insurance kept by the Association and Owners.*

11.1. **CASUALTY INSURANCE.** The Board shall obtain all risk property insurance for loss or damage to all insurable Improvements on the Association Property with an agreed amount endorsement for no less than one hundred percent (100%) of the full replacement cost (new without deduction for depreciation) of the cost of Improvements, fixtures and other property, without deduction for coinsurance, and may obtain insurance against such hazards and casualties as the Association may deem desirable if commercially reasonable and held by reasonably prudent owners of similar properties. The Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The policies insuring the Association Property must be written in the name of, and the proceeds thereof must be payable to the Association. Unless the applicable insurance policy provides for a different procedure for filing claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made.

11.2. **INSURANCE OBLIGATIONS OF OWNERS.** Each Owner is responsible for insuring his Residence, personal property and all other Improvements within his Lot as required by the applicable Supplemental Declaration. Such policies shall not adversely affect or diminish any coverage under any insurance obtained by or on behalf of the Association. Duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Association, to the extent of such reduction.

11.3. **WAIVER OF SUBROGATION.** All policies of property insurance held by the Association or the Owners must provide, if available on commercially reasonable terms, for a waiver of: (a) any defense based on coinsurance, and (b) any claim for subrogation and other rights of recovery as they might have against each other and their respective agents, employees, invitees and insurers with respect to all perils covered by whatever casualty insurance is in effect. As to each policy of insurance the Association keeps which will not be voided or impaired thereby, the Association waives and releases all claims against the Board, the Owners, the Community Manager, the Successor Declarants and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.4. **LIABILITY AND OTHER INSURANCE.** The Association shall obtain commercial general liability insurance, including coverage for medical payments and malicious mischief, in such limits

as it deems desirable, insuring against liability for bodily injury, death and property damage arising from the Association's activities or with respect to property the Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board and the Community Manager, against liability in connection with the Association Property. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Association's officers and the Community Manager against liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any Person handling the Association funds, including, but not limited to, Association officers, directors, employees and agents and the Community Manager employees, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the Association's or the Community Manager's custody during the term of the insurance. The aggregate amount of such insurance coverage may not be less than one-fourth (1/4) of the Annual Common Assessments on all Lots in the Development, plus reserve funds. In addition, the Association shall continuously keep in effect such casualty, flood and liability insurance and fidelity insurance coverage meeting the requirements for developments such as the Development established by FNMA, GNMA and FHLMC, except to the extent such coverage is not reasonably available or has been waived in writing.

## 12. RIGHTS OF MORTGAGEES

*This Section gives various rights to lenders.*

12.1. **GENERAL PROTECTIONS.** Notwithstanding any other provision of this 1st Restated Declaration, no amendment or violation of the 1st Restated Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage made in good faith and for value, provided that after the foreclosure of any such Mortgage such Lot will remain subject to this 1st Restated Declaration. For purposes of the Governing Documents, "first Mortgage" means a Mortgage with first priority over other Mortgages on a Lot, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Governing Documents which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based upon one (1) vote for each Lot encumbered by each such first Mortgage. In order to induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this 1st Restated Declaration or any other of the Governing Documents, these added provisions control).

12.2. **WRITTEN NOTIFICATION.** Each Mortgagee, insurer and guarantor of a first Mortgage encumbering at least one Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: a) any condemnation or casualty loss which affects either a material portion of the Development or the Lots securing the respective first Mortgage, b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Lots securing the respective first Mortgage, which notice each Owner consents to and authorizes, c) a lapse, cancellation, or material modification of any policy of insurance or fidelity insurance kept by the Association, and d) any abandonment or termination of the Association.

12.3. **ACQUISITION BY MORTGAGEE.** Each first Mortgagee of a Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage shall take title to such Lot free of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such Mortgagee acquires title to such Lot.

12.4. **PAYMENTS OF DELINQUENT AMOUNTS.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for Association Property and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

12.5. **CONTRACTS.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines or requirements of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots. Each Owner agrees that it will benefit the Association and its Members, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Development as a qualifying subdivision under their respective policies, Community Guidelines. Each Owner authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

### 13. ENFORCEMENT

13.1. **ENFORCEMENT OF RESTRICTIONS.** All disputes arising under the Governing Documents, unless otherwise stated herein, shall be resolved as follows:

13.1.1. **Violations Identified by the Association.** If the Board determines that there is a violation of the Governing Documents, or the ARC determines that an Improvement which is the responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the ARC and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Review Committee. If an Owner does not perform such corrective action as is required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Compliance Assessment. If the violation involves nonpayment of an Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures set forth in Section 14, below.

13.1.2. **Violations Identified by an Owner.** If an Owner alleges that another Owner, or other Person, is violating the Governing Documents (other than nonpayment of an Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to litigation.

13.1.3. **Legal Proceedings.** Failure of an Owner, or any other Person, to comply with any of the terms of the Governing Documents is grounds for relief which may include imposition of a Compliance Assessment and/or an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 12.1 must first be followed, if they are applicable.

13.1.4. **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Lot to comply with the Governing Documents. The Board may Record a Notice of Noncompliance against an Owner's Lot for any violation of the Governing Documents, if permitted by law.

13.1.5. No Waiver. Failure to enforce any provision of the 1st Restated Declaration hereof does not waive the right to enforce that provision, or any other provision of the 1st Restated Declaration.

13.1.6. Right to Enforce. The Board or any Owner (not at the time in default hereunder) may enforce the Governing Documents as described in this Section. Each remedy provided for in the Governing Documents is cumulative and not exclusive or exhaustive.

#### 14. NONPAYMENT OF ASSESSMENTS.

*This Section establishes procedures for enforcing the Governing Documents, collecting delinquent assessments and resolving disputes with the Successor Declarants.*

14.1. REMEDIES. Any installment of an Assessment is delinquent if not paid within ten (10) days of the due date established by the Board. Any Assessment installment not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided in this 1st Restated Declaration bears interest at the rate of eighteen percent (18%) per annum commencing from the date the Assessment becomes due until paid. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The Board may also require the delinquent Owner to pay a late charge as established in the Community Guidelines. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. The Association may Record a notice of lien against the delinquent Lot. The Association need not accept any tender of a partial payment of an Assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Association's right to demand and receive full payments thereafter.

14.2. THE ASSOCIATION'S LIEN. Subject to any contrary provision in Utah Law, a lien in favor of the Association pursuant to this 1st Restated Declaration for any unpaid Assessments, is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances (other than first Mortgages) recorded before recordation of this 1st Restated Declaration; (2) a first Mortgage on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent, except that the Association's lien is prior to such first Mortgage to the extent and in the amount of the Common Assessments for Common Expenses based on the periodic budget adopted by the Association which would have become due, in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This provision does not affect the priority of a lien for other Assessments made by the Association.

14.3. RECORDING OF LIEN. Recording of the 1st Restated Declaration constitutes record notice and perfection of the Association's Lien. Further recording of a claim of lien for Assessment under this provision is not required.

14.4. LIMITATION OF LIEN/EFFECT OF BANKRUPTCY. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if an Owner of a Lot subject to a lien files a petition for relief under the United States Bankruptcy Code ("Bankruptcy Code"), the time period for instituting proceedings to enforce the Association's lien shall be tolled until the later of the time period allowed hereunder or thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

14.5. FORECLOSURE SALE. The Association may exercise any non-judicial remedy available under Utah law to foreclose a lien for unpaid Assessments, including exercising a private power of sale. A sale to foreclose a Association lien may be conducted in the same manner, prescribed by Utah law, as foreclosures of deeds of trust. The Association, through duly authorized agents, may bid on the Lot at



foreclosure sale, and acquire and hold, lease, encumber and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner. Unless otherwise provided by Utah law, there is no right of redemption by the former Owner after the non-judicial foreclosure sale is completed by the Association.

**14.6. CUMULATIVE REMEDIES.** All remedies the Association has available in connection with collection of delinquent Assessments are cumulative and not exclusive. A suit to recover a money judgment against an Owner may be maintained without foreclosing or waiving the Association's lien and right to foreclose the lien. After a Mortgagee or other Person obtains title to a Lot by judicial foreclosure or by means set forth in a Mortgage, the Lot shall remain subject to the 1st Restated Declaration and the payment of all installments of Assessments accruing after the date the Mortgagee or other Person obtains title.

**14.7. DISPUTES WITH DECLARANT PARTIES.** Any disputes (each, a "Dispute") between (a) the Association or any Owners, and (b) the Successor Declarants, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Successor Declarants (collectively "Declarant Parties") arising under this 1st Restated Declaration or relating to the Development, including disputes regarding latent or patent construction defects, but excluding actions taken by the Association against the Successor Declarants to collect delinquent Assessments, and disputes solely between the Successor Declarants involving contracts for purchase and sale of any portion of the Development, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), shall comply with the following procedure: a) give notice to the Successor Declarants of the dispute, b) provide the Successor Declarants the right to inspect and correct, and c) request mediation in compliance with the Utah Uniform Mediation Act (Utah Code Ann § 78B-10-101 *et seq*) with the parties bearing their own costs and attorney's fees.

**14.7.1. Judicial Reference.** If a Dispute remains unresolved after a good faith attempt at mediation lasting at least five (5) hours has occurred, any of the parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than the Successor Declarants who represent not less than seventy-five percent (75%) of the voting power (excluding the voting power of the Successor Declarants) of the Association, prior to filing a lawsuit in a Dispute with the Successor Declarants or a Declarant Party. All lawsuits regarding Disputes must be resolved by binding arbitration, conducted in compliance with the Utah Uniform Arbitration Act (Utah Code Ann. § 78B-11-101 *et seq*).

**14.7.2. Statutes of Limitation.** Nothing in this Section 14.7 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that the Successor Declarants, the Declarant Parties, the Association, and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 14.7.

**14.7.3. Agreement to Dispute Resolution; Waivers of Jury Trial and Award of Punitive Damages.** The Successor Declarants, the Association and each Owner agree to use the procedures established in this Section 14.7 to resolve all Disputes and waive their rights to resolve any Dispute in any other manner. The Successor Declarants, the Association and each Owner acknowledge that by agreeing to resolve all disputes as provided in this Section 14.7 they are giving up their right to have Disputes tried before a jury and waiving their rights to an award of punitive damages.

## **15. GENERAL PROVISIONS**



*This Section includes provisions that will allow the Development & the Successor Declarants to adapt to different changes.*

15.1. **TERM.** This 1st Restated Declaration continues in full force unless a Declaration of Termination satisfying the requirements of an amendment to this 1st Restated Declaration as set forth in Section 15.2 is complied with.

15.2. **AMENDMENTS.** Notwithstanding any other provisions of this Section 15.2, the Successor Declarants (for so long as The Successor Declarants own any portion of the Development or the Annexable Territory) may unilaterally amend all or a portion of this 1st Restated Declaration by Recording a written instrument signed by The Successor Declarants in order to: a) conform this 1st Restated Declaration to applicable law, b) conform this 1st Restated Declaration to the guidelines or requirements of VA, FHA, FNMA, GNMA, FHLMC or the City, c) correct typographical errors, d) change any exhibit to this 1st Restated Declaration or portion of an exhibit depicting property that is not part of a Phase for which assessments have commenced, e) change any exhibit to conform to as-built conditions, f) to comply with lender or title company requirements necessary for financing, refinancing, or insuring any part of the Development, g) to reflect changes in the Development plan that are consistent with the overall intent of this 1st Restated Declaration, and h) any other purpose that the Successor Declarants reasonably determines to be necessary or desirable, provided that such amendment does not have a materially adverse effect on the rights of any Owner.

15.3. **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this 1st Restated Declaration constitutes a gift or dedication of all or any part of the Development to the public, or for any public use.

15.4. **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Development does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained in this 1st Restated Declaration, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired an interest in the Development.

15.5. **NOTICES.** Except as otherwise provided in this 1st Restated Declaration, notice to be given to an Owner must be in writing and may be delivered to the Owner or Mortgagee personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. Delivery of such notice to one (1) or more co-owners of a Lot, to any general partner of a partnership or to a member of a limited liability company, constitutes delivery to all co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner or Mortgagee at the most recent address furnished by such Owner or Mortgagee to the Association. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address fixed and circulated to all Owners or sent by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish.

15.6. **ADDITIONAL PROVISIONS.** Notwithstanding the provisions contained in the Governing Documents, there may be provisions of various laws, including the Federal Fair Housing Act codified at Title 42 United States Code, Sections 3601 et seq., which may supplement or override the Governing Documents. The Successor Declarants makes no representations or warranties regarding the enforceability of any portion of the Governing Documents.

15.7. **ANNEXATIONS.** The Successor Declarants may unilaterally, but shall not be required to, add to the Development all or any portion of the Annexable Territory by Recording a Supplemental Declaration encumbering the portion of the Annexable Territory annexed thereby ("Annexed Territory"). Annexable Territory may be added to the Development without the approval of the Owners, the Board or the Association.

15.8. **SUPPLEMENTAL DECLARATION CONTENT.** Each Supplemental Declaration annexing real property to the Development shall contain at least the following provisions - A reference to this 1st Restated Declaration, which reference shall state the date of Recordation hereof and its Instrument number and relevant Recording data including, but not limited to: a) a description of the phases of Development, b) a description of the Annexed Territory, including any Association Property. A Supplemental Declaration may cover one (1) or more Phases, as designated in such Supplemental Declaration. Each Supplemental Declaration shall be signed by The Successor Declarants and by each Record owner of the Annexed Territory.

15.9. **RIGHTS OF ANNEXED TERRITORY MEMBERS.** Upon the Recording of a Supplemental Declaration containing the provisions as set forth in this Section, all provisions contained in this 1st Restated Declaration will apply to the Annexed Territory in the same manner as if it were originally covered by this 1st Restated Declaration, subject to the provisions of the applicable Supplemental Declaration. Thereafter, the rights, powers and responsibilities of the parties to this 1st Restated Declaration with respect to the Annexed Territory will be the same as with respect to the property originally covered.

## 16. THE SUCCESSOR DECLARANTS' RIGHTS AND EXEMPTIONS

*The Successor Declarants reserve various rights in this Section to facilitate the smooth, orderly development of the Development and to accommodate changes in the development plan that inevitably occur as a community the size of the Development grows and matures.*

16.1. **SUCCESSOR DECLARANT RIGHTS.** The Successor Declarants have the following rights:

16.1.1. **Subdivision.** To subdivide and resubdivide any portion of the Development and the Annexable Territory.

16.1.2. **Sales.** To sell, resell, rent or re-rent any portion of the Development and the Annexable Territory.

16.1.3. **Development.** To complete excavation, grading, construction of Improvements and other development activities on the Development and the Annexable Territory.

16.1.4. **Construction.** Subject to approval of any applicable governmental agency, to alter construction plans and designs, to modify Improvements and to construct such additional Improvements as the Successor Declarants deem advisable.

16.1.5. **Signs.** To erect, construct and maintain on the Development such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Development and the Annexable Territory.

16.1.6. **Creating Additional Easements.** At any time prior to acquisition of title to a Lot by a purchaser from the Successor Declarants, to establish on that Lot, additional licenses,

easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Development and the Annexable Territory.

16.1.7. Sales and Leasing. To use the Association Property for access to the sales and leasing facilities of the Successor Declarants by prospective purchasers and sales agents.

16.1.8. Models and Offices. To use any structures owned or leased by the Successor Declarants in the Development as a model home or real estate sales or leasing offices.

16.1.9. Modifications. Without the consent of the Owners, to modify the development plans for the Development, the Annexable Territory, or any portion thereof, including designating and redesignating phases of development and constructing Residences of larger or smaller sizes, values or of different types. However, any such proposed re-phasing or modification of a development plan may be subject to approvals by the City or such other local government authorities.

Nothing in the Governing Documents limits and no Owner or the Association will interfere with the Successor Declarants' exercise of these rights. However, the rights are subject to compliance with state and Local Ordinances.

16.2. EXEMPTIONS. The Successor Declarants are exempt from all of the restrictions contained in Section 3 of this 1st Restated Declaration. Furthermore, The Successor Declarants are not subject to ARC approval with respect to their construction or development activities. The Successor Declarants may exclude portions of the Development from jurisdiction of the ARC by Supplemental Declaration.

16.3. ASSIGNMENT OF RIGHTS. All or any portion of the rights of the Successor Declarants in the Governing Documents may be assigned by the Successor Declarants, to any successor in interest to any portion of Declarant's interest in any portion of the Development or the Annexable Territory by an express written assignment which specifies the rights of the Successor Declarants so assigned.

16.4. EASEMENT RELOCATION. Association Property easements over real property the fee title to which has not been made subject to this 1st Restated Declaration ("Interim Easement Area") may be relocated, modified or terminated by the Successor Declarants to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to this 1st Restated Declaration. No such relocation, modification or termination shall prevent access to any Lot. Public utility easements may not be altered or relocated without the consent of the utility company that uses the easement.

16.5. RELATIONSHIP TO OTHER RESTRICTIONS. If any portion of the Governing Documents conflicts with any provision of this 1st Restated Declaration, the provision of this 1st Restated Declaration shall control. Supplemental Declarations may add to the rights and exemptions created in this 1st Restated Declaration, but may not limit the rights and exemptions created in this Declaration.

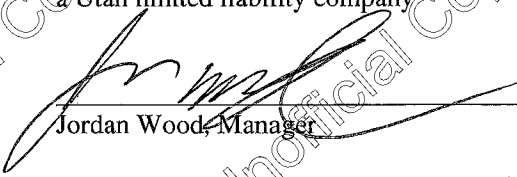
*(Signature Pages to Follow)*

DATED for identification purposes this 20<sup>th</sup> day of May, 2025.

DECLARANT:

NOVELTY HOMES, LLC

a Utah limited liability company

  
Jordan Wood, Manager

STATE OF UTAH )

) ss.

COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of May, 2025, by Jordan Wood, as the authorized representative of NOVELTY HOMES, LLC, a Utah limited liability company. Mr. Wood indicated that he execute the same for and on behalf of said company for its intended purpose.

  
Notary Public




NOTARY PUBLIC  
JENNIFER ARGANBRIGHT  
COMM. # 731957  
MY COMMISSION EXPIRES  
JULY 05, 2027  
STATE OF UTAH

DATED for identification purposes this 21<sup>st</sup> day of May, 2025.

DECLARANT:

ROCKWELL HOMES UTAH INC

a Utah corporation

  
Paul Johnson, President

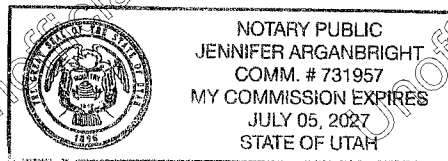
STATE OF UTAH )

) ss.

COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 2025, by Paul Johnson, as the authorized representative of ROCKWELL HOMES UTAH INC, a Utah corporation. Mr. Johnson indicated that he execute the same for and on behalf of said company for its intended purpose.

  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THIS DECLARATION**

**Finley Farms Phase 1A**

ALL OF LOTS 172-175, FINLEY FARMS SUBDIVISION, PHASE 1A, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-1A-172, W-FIFA-1A-173, W-FIFA-1A-174, W-FIFA-1A-175*

**Finley Farms Phase 1B**

ALL OF LOTS 19-56, and 101, FINLEY FARMS SUBDIVISION, PHASE 1B, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-1B-19, W-FIFA-1B-20, W-FIFA-1B-21, W-FIFA-1B-22, W-FIFA-1B-23, W-FIFA-1B-24, W-FIFA-1B-25, W-FIFA-1B-26, W-FIFA-1B-27, W-FIFA-1B-28, W-FIFA-1B-29, W-FIFA-1B-30, W-FIFA-1B-31, W-FIFA-1B-32, W-FIFA-1B-33, W-FIFA-1B-34, W-FIFA-1B-35, W-FIFA-1B-36, W-FIFA-1B-37, W-FIFA-1B-38, W-FIFA-1B-39, W-FIFA-1B-40, W-FIFA-1B-41, W-FIFA-1B-42, W-FIFA-1B-43, W-FIFA-1B-44, W-FIFA-1B-45, W-FIFA-1B-46, W-FIFA-1B-47, W-FIFA-1B-48, W-FIFA-1B-49, W-FIFA-1B-50, W-FIFA-1B-51, W-FIFA-1B-52, W-FIFA-1B-53, W-FIFA-1B-54, W-FIFA-1B-55, W-FIFA-1B-56, W-FIFA-1B-101*

**Finley Farms Phase 2**

ALL OF LOTS 5, 13-15, 57-62, 95-100, and 102-129, FINLEY FARMS SUBDIVISION, PHASE 2, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-2-5, W-FIFA-2-13, W-FIFA-2-14, W-FIFA-2-15, W-FIFA-2-57, W-FIFA-2-58, W-FIFA-2-59, W-FIFA-2-60, W-FIFA-2-61, W-FIFA-2-62, W-FIFA-2-95, W-FIFA-2-96, W-FIFA-2-97, W-FIFA-2-98, W-FIFA-2-99, W-FIFA-2-100, W-FIFA-2-102, W-FIFA-2-103, W-FIFA-2-104, W-FIFA-2-105, W-FIFA-2-106, W-FIFA-2-107, W-FIFA-2-108, W-FIFA-2-109, W-FIFA-2-110, W-FIFA-2-111, W-FIFA-2-112, W-FIFA-2-113, W-FIFA-2-114, W-FIFA-2-115, W-FIFA-2-116, W-FIFA-2-117, W-FIFA-2-118, W-FIFA-2-119, W-FIFA-2-120, W-FIFA-2-121, W-FIFA-2-122, W-FIFA-2-123, W-FIFA-2-124, W-FIFA-2-125, W-FIFA-2-126, W-FIFA-2-127, W-FIFA-2-128, W-FIFA-2-129*

**Finley Farms Phase 3**

ALL OF LOTS 300-332, FINLEY FARMS SUBDIVISION, PHASE 3, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-3-300, W-FIFA-3-301, W-FIFA-3-302, W-FIFA-3-303, W-FIFA-3-304, W-FIFA-3-305, W-FIFA-3-306, W-FIFA-3-307, W-FIFA-3-308, W-FIFA-3-309, W-FIFA-3-310, W-FIFA-3-311, W-FIFA-3-312, W-FIFA-3-313, W-FIFA-3-314, W-FIFA-3-315, W-FIFA-3-316, W-FIFA-3-317, W-FIFA-3-318, W-FIFA-3-319, W-FIFA-3-320, W-FIFA-3-321, W-FIFA-3-322, W-FIFA-3-323, W-FIFA-3-324, W-FIFA-3-325, W-FIFA-3-326, W-FIFA-3-327, W-FIFA-3-328, W-FIFA-3-329, W-FIFA-3-330, W-FIFA-3-331, W-FIFA-3-332*

Finley Farms Phase 4

ALL OF LOTS 6-12, and 16-18, FINLEY FARMS SUBDIVISION, PHASE 4, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-4-6, W-FIFA-4-7, W-FIFA-4-8, W-FIFA-4-9, W-FIFA-4-10, W-FIFA-4-11, W-FIFA-4-12, W-FIFA-4-16, W-FIFA-4-17, W-FIFA-4-18*

Finley Farms Phase 6

ALL OF LOTS 63-79, and 82-94, FINLEY FARMS SUBDIVISION, PHASE 6, according to the Official Plat thereof on file in the Office of the Recorder of Washington County, State of Utah.

*Parcel Nos.: W-FIFA-6-63, W-FIFA-6-64, W-FIFA-6-65, W-FIFA-6-66, W-FIFA-6-67, W-FIFA-6-68, W-FIFA-6-69, W-FIFA-6-70, W-FIFA-6-71, W-FIFA-6-72, W-FIFA-6-73, W-FIFA-6-74, W-FIFA-6-75, W-FIFA-6-76, W-FIFA-6-77, W-FIFA-6-78, W-FIFA-6-79, W-FIFA-6-82, W-FIFA-6-83, W-FIFA-6-84, W-FIFA-6-85, W-FIFA-6-86, W-FIFA-6-87, W-FIFA-6-88, W-FIFA-6-89, W-FIFA-6-90, W-FIFA-6-91, W-FIFA-6-92, W-FIFA-6-93, W-FIFA-6-94*

**EXHIBIT B**  
**ANNEXABLE TERRITORY**

**PARCEL: W-5-3-2-247 (Future Finley Farms Phase 5)**

**BEGINNING AT A POINT THAT LIES SOUTH 01°03'08" WEST ALONG THE SECTION LINE 433.79 FEET AND WEST 1212.55 FEET FROM THE EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°44'33" WEST 360.67 FEET; THENCE SOUTHERLY ALONG A 150.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 18°45'05" EAST A DISTANCE OF 100.11 FEET), CENTER POINT LIES SOUTH 89°15'27" EAST THROUGH A CENTRAL ANGLE OF 38°59'16", A DISTANCE OF 102.07 FEET; THENCE SOUTH 38°14'43" EAST 124.23 FEET; THENCE SOUTH 51°45'17" WEST 224.80 FEET; THENCE SOUTHWESTERLY ALONG A 345.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 45°55'53" WEST A DISTANCE OF 68.69 FEET), CENTER POINT LIES SOUTH 38°21'20" EAST THROUGH A CENTRAL ANGLE OF 11°25'34", A DISTANCE OF 68.80 FEET; THENCE NORTH 44°47'35" WEST 50.87 FEET; THENCE NORTHWESTERLY ALONG A 430.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 22°01'34" WEST A DISTANCE OF 332.81 FEET), CENTER POINT LIES NORTH 45°12'25" EAST THROUGH A CENTRAL ANGLE OF 45°32'03", A DISTANCE OF 341.73 FEET; THENCE NORTH 00°44'27" EAST 398.84 FEET; THENCE SOUTH 89°16'40" EAST 277.01 FEET, TO THE POINT OF BEGINNING.**

**CONTAINING 194,967 SQUARE FEET OR 4.48 ACRES.**