

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

**RESIDENCES AT HOLMES CREEK  
Phases 1, 2, 3, 4, & 5  
(a PRUD SUBDIVISION)**

This AMENDED AND RESTATED ENABLING DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RESIDENCES AT HOLMES CREEK ("Declaration") is promulgated by the Residences at Holmes Creek a Nonprofit Corporation ("Association") and becomes effective when recorded with the Davis County Recorder's Office.

**RECITALS**

A. The Residences at Holmes Creek, a PRUD, located in Layton, Utah and described on Exhibit A ("Property") is a common interest community made subject to certain covenants, conditions, and restrictions as originally provided in the Enabling Declaration of Covenants, Conditions and Restrictions of Residences at Holmes Creek Phases 1, 2, 3, 4, & 5 a PRUD Subdivision recorded on January 31, 2000 as Entry Number 1572607 with the Davis County Recorder ("Original Declaration").

B. The Original Declaration created the Association and charged it with the responsibility to govern the Property, maintain the common areas, collect assessments from Lot Owners, and enforce the architectural controls and other covenants, conditions, and restrictions contained in the Original Declaration.

C. The Association and Property are also subject to the Utah Community Association Act beginning at U.C.A. §57-8a-101.

D. The Association and the Lot Owners deem it in their bests interests to adopt this Declaration to better preserve and maintain the integrity, design, and standards of the Property, to remove language made moot by the original developer's turnover of the Property to the Lot Owners, to stay current with applicable laws, and to ensure a more effective and efficient governance and operation of the Association.

E. The Association hereby declares that the Property shall be held, transferred, conveyed, and occupied subject to the following covenants, conditions, and restrictions, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each Lot Owner thereof.

F. This Declaration has been approved by at least 67% of the voting interests of the Association pursuant to the Original Declaration and the Utah Community Association Act at §57-8a-104 and is intended to and shall supersede and replace the Original Declaration and any amendments) thereto made prior to the execution of this Declaration.

## **DECLARATION**

### **I. DEFINITIONS**

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

1.2. **Assessments** shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, late fees, interest, and fines, all as provided in this Declaration.

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

1.4. **Association** shall mean and refer to the Residences at Holmes Creek a Nonprofit Corporation, a Utah non-profit corporation.

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

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

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

1.8. **Common Areas** shall mean and refer to that part of the Property that is not included with the Lots which is owned by the Association for the common use and enjoyment of the Owners. Common Areas are described on the Plat and include, without limitation, the streets and sidewalks, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines, landscape easements, and personal property owned by the Association when the context so requires.

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

1.10. **Declaration** shall mean and refer to this Amended and Restated Enabling Declaration of Covenants, Conditions, and Restrictions of Residences at Holmes Creek, and any future amendments thereto.

1.11. **Development** or **Project** shall at any point in time mean, refer to, and consist of the Residences at Holmes Creek PRUD subdivision then in existence.

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

1.13. **Governing Documents** shall mean and refer to the Declaration, Articles of Incorporation, Bylaws, Plat, and the Rules.

1.14. **Limited Common Areas** shall mean and refer to those areas reserved for the use and benefit of a designated Lot to the exclusion of other Lot Owners, as shown by the Plat or provided herein. Limited Common Areas include driveways, backyard patios, front stoops and stairs, and other areas so designated on the Plat.

1.15. **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.16. **Lot** shall mean and refer to each of the 28 individual lots within the RESIDENCES AT HOLMES CREEK, a PRUD Subdivision, Phases 1, 2, 3, 4, and 5, as shown on the Plat, with the exception of the Common Areas and Limited Common Areas.

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

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

1.19. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.20. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.21. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, invitees, guests, and family members, agents, and representatives living, dwelling, visiting, or staying in a Living Unit. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

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

1.23. **Party Wall** shall mean and refer to a wall that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two or more Living Units.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.25. **Plat** shall mean and refer to the official subdivision plats of RESIDENCES AT HOLMES CREEK, a PRUD Subdivision Phases 1,2, 3, 4, and 5 filed and recorded in the official records of the Davis County Recorder's Office; and any amendments recorded thereto.

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

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

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

## II. **PROPERTY DESCRIPTION**

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

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

2.2 **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Residences at Holmes Creek, A PRUD Subdivision.

2.3 **Description of Lots.** The Projects consists of 28 Lots, each of which includes a Living Unit and other improvements provided on the Plat or herein. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats. There are ten (10) Lots in Phase 1; four (4) Lots in Phase 2; four (4) Lots in Phase 3; five (5) Lots in Phase 4; and five (5) Lots in Phase 5.

2.4 **Description of the Living Units.** The Living Unit includes both “interior elements” and “exterior elements”.

(a) For purposes of this Declaration, the “interior elements” shall include, without limitation, all pipes, wires, conduits, lines, or systems (which for brevity are herein and hereafter referred to as “utilities”), whether public or private-company owned, located from the connecting point to the exterior of the Living Unit where such utilities enter the Living Unit and continuing into the interior portion of such Living Unit, interior spaces, flooring, doors, and partitions; Party Walls; plaster; gypsum; drywall; wallpaper; paint; ceilings; all other materials constituting part of the interior surfaces of the Living Units; and other interior fixtures, mechanical devices, electrical, plumbing, and heating, ventilating, and air conditioning systems, and similar interior improvements as may be further determined by Rule of the Board in its sole and exclusive discretion.

(b) For purposes of this Declaration, the “exterior elements” shall include, without limitation, all utilities, whether public or private-company owned, located outside the boundaries of the Living Unit (which may even be outside the boundaries of the Lot) serving solely the Living Unit, and which end at the connecting point to the exterior of the Living Unit where such utilities enter the Living Unit and are stubbed to provide utility service to the Living Unit but do not include any interior portion of such utilities located within a Living Unit which constitute interior elements as further defined in Section 2.4(a) above; roofs and rooftops; exterior walls and their surfaces; gutters; downspouts; windows; doors; shutters; doorsteps; foundations; garage door; step and patio railings; Lot fencing; exterior light fixtures upon the Living Unit; and other similar exterior improvements and building components as may be further determined by Rule of the Board in its sole and exclusive discretion.

2.5 **Description of Common Areas.** The Common Areas of the Project shall be and are the roads, grass and lawn areas, specifically designated public parking areas, if any, and any and all other Common Areas designated as such on the Plat, and any other future interests in Common Areas pursuant to the terms of this Declaration. A Lot Owner in each phase shall be entitled to use the Common Areas of all five (5) phases of the Project.

2.6 **Description of the Limited Common Areas.** The Limited Common Areas of the Project shall be the driveways, backyard patios, front stoop and stairs leading to the front door of a Living Unit, and any other areas designated as Limited Common Area on the Plat.

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

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

3.2. **Voting Rights.** Each Lot is entitled to one (1) vote. The vote may be exercised by the Owner of the Lot, except as as may be limited herein or by the Bylaws.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A

vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflict votes from the same Lot, the vote involved shall not be counted for any purpose other than to determine whether a quorum exists.

3.4. **Record of Ownership.** Within 10 days following the purchase of a Lot or becoming a contract buyer, such Owner shall notify the Association of the transaction and, if not done already, deposit a reinvestment fee with the Association as further described in Section 5.12. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any Assessment provided herein shall also notify the the Association of the name and address of the Mortgagee, which information shall be maintained in the records of the Association. Any costs incurred by the Association in obtaining the above information not furnished by such Owner shall be paid to the Association as an "Individual Assessment" as provided in Section 5.5 herein.

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

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom.

4.2. **Title to Common Areas.** Title to the Common Areas shall remain in the name of the Association.

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

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

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

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

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

(e) The right of the Association to sell, convey, dedicate, or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such sell, conveyance, dedication, or transfer must, however, be assented to by at least a majority of the Lots.

4.4. **Easements in Favor of the Association.** The Lots are hereby made subject to the following easements in favor of the Association and its Directors, officers, agents, employees, and independent contractors:

(a) For inspection during reasonable hours of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible.

(b) For inspection, maintenance, repair, and replacement of portions of the Common Areas accessible only from such Lot(s).

(c) For correction of emergency conditions on one or more Lots or on portions of the Common Areas accessible only from such Lot(s).

(d) To enable the Association, the Board, Manager, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers, and duties under the Governing Documents.

(e) For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants are complying with the provisions of the Governing Documents.

(f) For inspection, maintenance, repair, and replacement of the landscaped areas and Common Area fencing that may be located near a Lot which the Association is obligated to repair, replace, and maintain pursuant to the provisions of this Declaration.

4.5. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property.

## V. ASSESSMENTS

5.1. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including, by illustration but not limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as provided in the Governing Documents.

5.2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, and protection of the Project; enhancing the quality of life in and the value of the Project; payment of taxes, insurance, and other financial obligations of the Association; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes provided in the Governing Documents.

5.3. **Annual Assessments.** The total annual Assessment against all Lots shall be established by the Board and based upon advanced estimates of cash requirements for Common Expenses. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.4. **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to seven-hundred-and-fifty-dollars (\$750), payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Property or Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over seven-hundred-and-fifty-dollars (\$750) in a calendar year may be levied if assented to by a majority of the Owners present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessment and the time for its payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.5. **Individual Assessments.** In addition to Annual and Special Assessments authorized pursuant to Sections 5.3 and 5.4 above, the Board may levy at any time Individual Assessments: (a) on each Lot specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or Occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot for which the Association incurs any expense in enforcing the terms of the Governing Documents, including, but not limited to, costs incurred to bring a Lot and/or its Living Unit into compliance with the Governing Documents. The aggregate amount of any such Individual Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or Occupants' negligence.

5.6. **Uniform Rate of Assessment.** Except for Individual Assessments provided in Section 5.5 above, Annual and Special Assessments shall be levied equally among the Lots, each Lot being responsible for a 1/28<sup>th</sup> share.

5.7. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary, regardless of whether a lawsuit is ultimately filed, shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.8. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater, set by resolution of the Board, unless prohibited by the Act.

5.9. **Default in Payment of Assessment; Enforcement of Lien.** Assessments not paid within fifteen (15) days of the due date thereof shall be deemed delinquent and subject to interest at the rate of eighteen-percent (18%) per annum. In addition to the interest charge, a late fee may be imposed by the Board in an amount established through Rules. If an Assessment or other charge levied under this Declaration becomes delinquent, the Association may exercise any or all of the following remedies:

- (a) The Association may suspend such Owners voting rights.
- (b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time any Assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County, Utah against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees,

penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the Original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(e) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.

(f) The Association shall have any other remedy available to it by law or in equity.

5.10 **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Davis County to the extent taxes are required on such Common Areas. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Davis County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.11 **Appointment of Trustee.** The Owners hereby convey and warrant pursuant to U.C.A. §57-1-20 and §57-8a-402 to the Association's attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration.

5.12 **Reinvestment Fee Contribution.** At the closing settlement of each Lot, a Reinvestment Fee shall be paid to the Association in the amount up to or equal to two (2) months of the then current monthly installment payment of the Annual Assessment provided in Section 5.3. Such amount shall be in addition to and not in lieu of any pro rata shares of Assessments due and adjusted at settlement. This Reinvestment Fee shall be the personal obligation of the new Owner and shall be secured by an Assessment lien as provided herein.

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

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

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

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

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

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

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

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

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

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

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal property of any Owner(s).

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

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

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

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

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

6.3. **Liability.** A Director or officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Director or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against

liability and expenses incurred to the maximum extent permitted by law, except where the Director or officer is found by a court of law to have acted willfully or intentionally in carrying out his/her duties.

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

## **VII. MAINTENANCE**

7.1. **Maintenance of Common Areas.** The Association shall maintain, repair, and replace all Common Areas, including but not limited to grass, trees, shrubs, walks, and private streets, unless the maintenance thereof is assumed by a public body. The Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Living Unit. The Association shall also have no obligation to perform any maintenance and/or repair on any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

7.2. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, garbage/trash/snow removal for Common Areas and security services.

7.3. **Maintenance of Limited Common Areas.** The Owners shall maintain, repair, and replace the Limited Common Areas within their exclusive use. The Limited Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. Owners shall be responsible for the removal of snow upon the Limited Common Areas. As further provided in Article X, at the discretion of the AR Committee, any maintenance, repair, and replacement work of the Limited Common Areas may be managed and performed by the Association, and the costs of such maintenance, repair, and replacement work shall be levied against the corresponding Unit Owner as an Individual Assessment as reasonably determined by the AR Committee.

7.4. **Living Unit Maintenance.** Each Owner shall have the obligation to maintain, repair, and replace the Living Unit, including both interior elements and exterior elements as further defined in Section 2.4 above. Each Owner shall paint, repair, replace, and otherwise maintain the exterior and interior of his Living Unit and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems. The Living Unit shall be kept in a clean, safe, aesthetically pleasing, and workmanlike manner. Living Unit maintenance, repair, and aesthetic standards shall be established by the AR Committee and all Owners are subject thereto. As further provided in Article X, at the discretion of the AR Committee, any maintenance, repair, and replacement work for exterior elements may be managed and performed by the Association, and the costs of such maintenance, repair, and replacement work shall be levied against the responsible Unit Owner as an Individual Assessment as reasonably determined by the AR Committee.

7.5. **Party Wall Maintenance.** By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Living Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Living Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole

and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefitted by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

7.6. **Owner Maintenance Neglect.** The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Living Unit) if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules.

7.7. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner or his/her Occupants, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth in Section 5.5) to which such Lot is subject.

## **VIII. INSURANCE**

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

### **8.2 Property Insurance.**

(a) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

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

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

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

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

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

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

- i. the Association's policy provides primary insurance coverage;
- ii. notwithstanding Subsection (b)(i) above, and subject to Subsection (b)(iii) below:
  - 1) the Owner is responsible for the Association's policy deductible; and
  - 2) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- iii. An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and
- iv. If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

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

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

responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

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

**8.3 Flood Insurance.** The Association may purchase flood insurance to cover water and flooding perils for the Common Areas not otherwise covered by blanket property insurance as the Board of Directors deems appropriate. Owners are responsible to purchase flood insurance covering water and flooding perils for their Living Unit and corresponding Limited Common Areas that is not otherwise covered by the Association's blanket property insurance policy.

**8.4 Earthquake Insurance.** The Association may purchase earthquake insurance as the Board of Directors deems appropriate. If the Board of Directors elects not to purchase earthquake insurance, a vote of a majority of the Owners present at the annual meeting, with a proper quorum, may veto the decision of the Board. If the Owners at the annual meeting veto the decision to not purchase earthquake insurance, the Board of Directors shall purchase earthquake insurance within (60) days of the vote.

**8.5 Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

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

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

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

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

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

8.11 **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.**

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

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

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

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

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

8.16 **Owner Insurance Obligation.** Each Owner shall maintain adequate insurance to cover the Association's deductible on a claim the Association tenders to its hazard insurance policy as described in Section 8.2(b) above. Each Owner shall also maintain insurance that would provide coverage against their Living Unit in the event that the Association elects not to tender an insurance claim to the Association's policy under Section 8.2(d) above. Each Owner shall provide evidence of such insurance to the Board of Directors upon request, or as further provided by the Rules. The Association may, without obligation, purchase insurance on behalf of an Owner who fails to comply with his/her insurance requirements and levy the premium costs against the Owner as an Individual Assessment. Nothing herein shall limit an Owner's ability to purchase additional insurance coverage as such Owner sees fit, including coverage for loss of use or for personal property. The Association shall not provide insurance coverage against a resident's personal property or any other item or coverage type not expressly required to be obtained by the Association in this Article VIII.

8.17 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8a-405 that became law in 2011, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to Project shall apply to this Association.

## **IX. USE RESTRICTIONS**

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

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

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

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like belonging to Owners or other residents of the Property shall be parked within the Development, unless in the Unit's garage, except temporary parking not to exceed forty-eight (48) hours. No motor vehicle of any kind shall be repaired, constructed, or reconstructed within the Project, unless done within the Unit's garage.

9.5. **Pets.** Up to two (2) domestic household pets are allowed at any given time at a Living Unit, whether such pet belongs to an Owner or an Occupant. Whenever a pet is allowed to leave a Lot, it

shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall make an unreasonable amount of noise or otherwise become a nuisance. Any exterior structure for the care, housing, or confinement of any such pets shall be approved by the Board in advance and maintained by the Owner. All pet waste shall immediately be picked up by its owner. Owners are strictly responsible for the behavior and actions of their pets and the pets of their Occupants and the Owners hereby agree to hold the Association harmless for any damage or injury caused such pet(s). Owners of pets must also abide by all applicable city/county pet municipal laws and ordinances.

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

9.7. **Maintenance and Repair.** No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Board, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement, and care of roofs, gutters, fascia, soffit, downspouts, windows, doors, and other exterior building surfaces.

9.8. **Nuisances.** No rubbish or debris of any kind shall be placed upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of Occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Living Units shall be kept and maintained in a clean and sanitary state so as not to attract rodents and other pests. In the event that rodents and other pests result from unclean and unsanitary conditions within a Living Unit, the Association may contract with a rodent and pest removal company and assess the resulting costs against the Owner of the Living Unit as an Individual Assessment.

9.9. **Signs.** No signs whatsoever shall be placed or maintained within the Project, including upon any Lot, except as otherwise allowed by the Board in the Rules.

9.10. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for a time period not to exceed twenty-four (24). Each Owner must at all times and at their expense provide garbage cans and plastic liners therefore, unless the Association elects to provide the same.

9.11. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is under no obligation to, enter a Living Unit to ensure that it is in compliance with this Section and Section 9.12 below.

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

9.13. **No Smoking Project.** The Project is a smoke-free development. Smoking is prohibited inside the Living Units, upon the Lots and Limited Common Areas, and throughout the Common Areas, except as may be allowed by the Board of Directors subject to applicable laws.

9.14. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture, portable barbecue grills in good condition

which may be maintained on backyard patios, and other items expressly allowed by the Board. Said patio furniture shall conform with standards set by the AR Committee.

9.15. **Window Coverings.** Every Owner shall be obligated to ensure that window coverings are installed within the Living Unit. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board. No window shall be covered by paint, blankets, rugs, foils, sheets, and the like. The Board may adopt Rules regulating the type, color, and design of any window coverings that can be viewed from outside the Living Unit.

9.16. **Parking.** Each Living Unit allows for up to three (3) long-term parking stalls (one in the garage and two on the Limited Common Area driveways in front of the Living Unit). Parking on the streets is prohibited unless so approved by the Board. Parking stalls within the Development are for short-term parking only. Parking shall be subject to and governed by Association Rules. The Board may adopt Rules relating to the size and dimensions of the vehicles parked within the Project; relating to the admission and temporary parking of vehicles within the Project; and the right to remove or cause to be removed any vehicles that are improperly parked; the time and manner that Common Areas parking spaces may be used; the levying of fines to Owners and Occupants who violate, or whose invitees violate, such Rules; and any other parking Rules the Board deems necessary.

9.17. **Renting of Living Units.** Notwithstanding anything to the contrary contained in this Declaration, the leasing or renting of any Living Unit within the Project shall be governed by this Section. An Owner may "rent" his/her Living Unit subject to the limitations and requirements of this Section. For purposes of this Section only, the term "rent" in any grammatical form includes lease, sublet, or otherwise permit or allow others to reside therein for legal consideration payable to the Owner or to others at the Owner's request or direction, or allow others to reside therein alone for charitable purposes without the owner in residence. No Living Unit may be rented for a period of less than six (6) consecutive months and an Owner may not rent less than the entire Living Unit. A Living Unit may not be rented except by written agreement that requires the tenants to abide by the Governing Documents and specifically provides that a violation of any provision of the Governing Documents is a breach under the rental agreement. A copy of the rental agreement shall be provided to the Board upon request. The Board may adopt by resolution, Rules that establish the contents or form of rental agreements, and any other Rules deemed necessary by the Board to implement this Section. Pursuant to Rules adopted under this Section, if the Board determines that a tenant has violated a provision of the Governing Documents, after notice and an opportunity for a hearing as provided by the Act, the Board may assess fines against the Owner and/or require an Owner to terminate a rental agreement. If an Owner fails to terminate a rental agreement upon request of the Association, the Association, in its sole discretion, may proceed with eviction proceedings on behalf of and with the authority of the Owner, in which case the Owner shall be responsible to reimburse the Association for all attorneys' fees and costs it incurs for taking such action. Said attorneys' fees and costs shall be assessed against the Owner as an Individual Assessment pursuant to Section 5.5 above.

## **X. ARCHITECTURAL CONTROLS**

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

### **10.2. Architectural Controls.**

(a) **Exterior Changes.** No exterior construction work or changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the AR Committee. By way of illustration, but not of limitation, this includes repairs or replacement to

roofs, windows, gutters, downspouts, soffit, fascia, doors, etc. Also by way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, lighting, repairs, excavation, patio covers, screens, doors, evaporative coolers, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, decks, balconies, shade screens, awnings, window coating or tinting, furniture, decorative alterations or other work that in any way alters the exterior appearance of the Property. The AR Committee may designate the design, color, style, model and manufacturer of any exterior improvement or alteration that is acceptable for the Project. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

(b) Structural Interior Changes. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the AR Committee. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, windows, skylights, venting, and the like.

(c) Management over Owner Maintenance, Repair, and Replacement Responsibilities. The AR Committee shall oversee, manage, and ensure that the Owners are fulfilling their responsibilities pertaining to the maintenance, repair, and replacement of the Living Units, Limited Common Areas, Party Wall, and any other areas for which the Owners are responsible (collectively referred in this Section 10.2 as the "Owner Responsible Areas"). This management and oversight includes the AR Committee having authority to secure bids and execute contracts for the maintenance, repair, and replacement of the Owner Responsible Areas on behalf of the Association and Owners, and to assess each Living Unit's proportionate share, as reasonably determined by the AR Committee, to the corresponding Living Unit Owner as an Individual Assessment under Section 5.5. Owners shall comply with the demands and requirements of the AR Committee, who is authorized to create Rules further setting forth procedures and guidelines for the regulation, management, and maintenance of the Property. In the event that the AR Committee elects to manage and perform maintenance, repair, or replacement work on the Living Units, Limited Common Areas, or Party Walls on behalf of the Owners, Owners cannot opt-out of such services and are required to pay the Individual Assessments levied against them by the Association. This will allow the Association to ensure aesthetic uniformity, quality, competitive pricing, and so forth.

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

## **XI. ENFORCEMENT**

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

## **XII. RIGHTS OF FIRST MORTGAGEE**

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

12.1. Mortgagee Foreclosure. Nothing herein shall impair the rights of the first Mortgagee of a Lot to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage; (b) accept a

deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or (c) sell or lease a Lot acquired by a Mortgagee.

12.2. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee, except for the Assessments levied during the immediate six (6) prior months. Mortgagees shall be responsible for Assessments or charges levied by the Association while holding title to a Lot.

12.3. **Mortgagees' Rights to Inspect Association Records.** The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

### **XIII. RIGHT OF ENTRY**

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

### **XIV. MISCELLANEOUS**

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

14.2 **Amendment.** Except as otherwise provided herein, this Declaration and/or the Plat may be amended only upon the affirmative vote of at least sixty-seven percent (67%) of the Lot Owners. Amendments to the Declaration shall be proposed by either a majority of the Board or by at least forty percent (40%) of the Lot Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Any amendment(s) shall be effective upon recordation in the office of the recorder of Davis County, State of Utah. In such instrument the Board and/or president of the Association shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature shall be required.

14.3 **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or

represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association. The following additional provisions shall govern any application of this Section 14.3:

(a) All necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 14.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

14.4. **Dissolution.** The Association may be dissolved by the affirmative assent in writing from 100% of the Lot Owners and first Mortgagees.

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

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

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

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

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

**CERTIFICATION**

The foregoing Amended and Restated Enabling Declaration of Covenants, Conditions, and Restrictions of Residences at Holmes Creek has been duly approved by at least 67% of the Lot Owners and members of the Association.

**RESIDENCES AT HOLMES CREEK  
A NONPROFIT CORPORATION**

By: Mark Swenson  
Its: President

State of Utah )  
 )  
 ):ss  
County of Davis )

On this 17<sup>th</sup> day of August, 2016, personally appeared before me  
Mark Swenson, who being by me duly sworn, did say that he/she  
is the President of the Residences at Holmes Creek a Nonprofit Corporation; and that the foregoing  
information is true and accurate to the best of his/her knowledge.

Heather Gillespie  
NOTARY PUBLIC



**EXHIBIT A**  
**Residences at Holmes Creek, a PRUD Subdivision**  
**Phases 1, 2, 3, 4, and 5**

**Project Legal Description by Phase:**

**PHASE 1**

Commencing at a point located South 89°30'20" East along the section line 1438.098 feet and South 653.065 feet from the Northwest corner of Section 27, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence South 42°58'17" West along the south boundary of Rosewood Lane 231.358 feet; thence along said south boundary and along the arc of a 223.82 foot radius curve to the right 83.83 feet (said chord bearing and distance being South 53°42'04" West 83.341 feet); thence South 64°25'52" West along said south boundary 7.60 feet; thence North 21°35'00" West 30.07 feet; thence along the center line of Rosewood Lane as follows: North 64°25'52" East 5.51 feet; along the arc of a 193.82 foot radius curve to the left 72.594 feet (chord bearing and distance being North 53°42'04" East 72.17 feet); North 42°58'17" East 269.98 feet; along the arc of a 191.97 foot radius curve to the right 98.809 feet (chord bearing and distance being North 57°43'00" East 97.722 feet); North 72°27'44" East 70.79 feet; thence South 22°02'32" East 30.09 feet; thence South 72°27'44" West 5.36 feet; thence South 21°42'56" East along the west boundary of Fairfield Road 240.06 feet; thence South 47°22'34" West along the physical boundary of Fiddler's Creek Subdivision, No. 2, 372.32 feet; thence North 45°03'42" West 11.00 feet; thence North 45°00'57" East 27.83 feet; thence North 43°52'19" East 122.84 feet; thence North 58°56'25" West 31.655 feet; thence North 7°45'52" East 15.62 feet; thence North 11°12'20" East 161.508 feet; thence North 46°01'20" West 109.72 feet to the point of beginning.

Area = 1.550 Acres.

**PHASE 2**

Commencing at a point located South 89°30'20" East along the section line 1208.476 feet and South 882.287 feet from the Northwest corner of Section 27, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence North 21°34'57" West to the south boundary of Rosewood Lane 5.74 feet; South 36°35'17" East 52.06 feet; thence South 43°50'08" East 48.81 feet; thence North 47°14'50" thence South 45°11'37" East 61.95 feet; thence North 43°58'19" East 107.735 feet; thence South Holmes Creek, No. 1~~as~~ follows: South 43°52'19" West 122.84 feet; South 45°00'57" West 27.83 feet; South 45°03'42" East 11.00 feet; thence South 47°22'34" West along Fiddler's Creek Subdivision, No. 2, physical boundary 143.23 feet; thence North 21°35'00" West 271.193 feet to the point of beginning.

Area = 0.687 Acres

**PHASE 3**

Commencing at a point located South 89°30'20" East along the section line 1381.32 feet and South 802.16 feet from the Northwest corner of Section 27, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence South 80°46'59" East 60.028 feet; thence South 9°13'01" West 36.596 feet; thence South 80°46'59" East 34.77 feet; thence South 7°02'17" West 30.557 feet; thence South 77°53'21" East to the boundary of Residences at Holmes Creek, No. 1~~as~~ 20.836 feet; thence South 7°45'52" West along said subdivision 15.62 feet; South 58°56'25" East 4.58 feet; thence South 43°58'19" West along the boundary of Residences ~~at~~ Holmes Creek No. 2~~as~~ 107.735 feet; thence continuing along ~~as~~ North 45°11'37" West 61.95 feet; North 43°48'23" East 47.90 feet; North 46°08'18" West 53.24 feet; thence North 15°03'43" East 68.618 feet to the point of beginning.

Area = 0.296 Acres

## PHASE 4

Commencing at a point located South 89°30'20" East along the section line 1381.32 feet and South 802.16 feet from the Northwest corner of Section 27, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence North 20°24'29" East 37.28 feet; thence North 44°39'09" East 31.94 feet; thence North 28°24'21" East 31.40 feet; thence North 46°01'20" West to the south boundary of Rosewood Lane 38.50 feet; thence North 42°58'17" East along said south boundary 50.007 feet; thence South 46°01'20" East along the boundary of Residences at Holmes Creek No.1, 109.72 feet; thence South 11°12'20" West along said Holmes Creek No.1, 161.508 feet; thence along Residences at Holmes Creek No.3 as follows; North 77°53'21" West 20.836 feet; North 7°02'17" East 30.557 feet; North 80°46'59" West 34.77 feet; North 9°13'01" East 36.596 feet; North 80°46'59" West 60.028 feet to the point of beginning.

Area = 0.372 Acres

## PHASE 5

Commencing at a point located South 89°30'20" East along the section line 1381.32 feet and South 802.16 feet from the Northwest corner of Section 27, Township 4 North, Range 1 West, Salt Lake Base and Meridian; thence along Residences at Holmes Creek No. 4 as follows; North 20°24'29" East 37.28 feet; North 44°39'09" East 31.94 feet; North 28°24'21" East 31.40 feet; North 46°01'20" West to the South boundary of Rosewood Lane 38.50 feet; thence along said Lane as follows South 42°58'17" West 181.34 feet; along the arc of a 223.82 feet radius curve to the right 83.83 feet (chord bearing and distance being South 53°42'04" West 83.341 feet; South 64°25'52" West 4.424 feet; thence along Residences at Holmes Creek, No. 2 as follows: South 36°35'17" East 52.06 feet; South 43°50'08" East 48.81 feet; North 47°14'50" East 121.78 feet; thence North 15°03'43" East 68.618 feet to the point of beginning.

Area = 0.459 Acres

**Lot Legal Description and Parcel Number  
(33 Parcels: 28 Lots & 5 Common Areas)**

All of the Lots at RESIDENCES AT HOLMES CREEK NO. 1 A PRUD

11-466-0001  
11-466-0002  
11-466-0003  
11-466-0004  
11-466-0005  
11-466-0006  
11-466-0007  
11-466-0008  
11-466-0009  
11-466-0010  
11-466-0011 (Common Area)

All of the Lots at RESIDENCES AT HOLMES CREEK NO. 2 A PRUD

11-467-0011  
11-467-0012  
11-467-0013  
11-467-0014  
11-467-0015 (Common Area)

All of the Lots at RESIDENCES AT HOLMES CREEK NO. 3 A PRUD

11-468-0015  
11-468-0016  
11-468-0017  
11-468-0018  
11-468-0019 (Common Area)

All of the Lots RESIDENCES AT HOLMES CREEK NO. 4 A PRUD

11-469-0019  
11-469-0020  
11-469-0021  
11-469-0022  
11-469-0023  
11-469-0024 (Common Area)

All of the Lots at RESIDENCES AT HOLMES CREEK NO. 5 A PRUD

11-470-0024  
11-470-0025  
11-470-0026  
11-470-0027  
11-470-0028  
11-470-0029 (Common Area)