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**DECLARATION
OF
COVENANTS, CONDITIONS, AND
RESTRICTIONS AND *D*
RESERVATION OF EASEMENTS
FOR
THE WINNIE**

01-504-0001 thru 0053 & 0055

**An Expandable Planned Unit Development
in
Davis County, Utah**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE WINNIE ("Declaration") is effective when recorded with the Davis County Recorder's Office by CW The Winnie Partnership, L.P., a Delaware limited partnership ("Declarant").

RECITALS

- A. Capitalized terms in this Declaration are defined in Article I.
- B. The real property situated in North Salt Lake, Davis County, Utah, described or shown in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a residential planned unit development consisting of Lots, residential Living Units, and related Common Areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as The Winnie ("Project").
- C. Declarant is the owner of the Parcel subject to this Declaration. By signing this Declaration, Declarant consents to subjecting the Project to the terms, covenants, conditions, and restrictions contained herein.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Property.
- E. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse Assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.
- F. The Association is not a cooperative.
- G. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Property, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.
- H. Declarant explicitly reserves for itself the option in the future to expand the Project.
- I. The Project is to be known as The Winnie.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

ARTICLE I. DEFINITIONS

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

1.2. **Additional Land** shall mean and refer to any additional land which may be added to the Project in accordance with the provisions outlined in this Declaration.

1.3. **Architectural Review Committee** or **ARC** 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. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.

1.5. **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.

1.6. **Association** shall mean and refer to The Winnie Owners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.7. **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. The Board is the governing body of the Association.

1.8. **Board Member** shall mean and refer to an individual member of the Board of Directors.

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

1.10. **Common Areas** shall mean any land or improvement owned by the Association or installed and maintained for the benefit of the Owners collectively, including utility lines servicing more than a single Living Unit; the private drives and roadways running through the Project as identified on the Plat; fences on the west boundaries of the Property; landscaping sprinkler system; and other improvements deemed common by the Board or set forth on the Plat.

1.11. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the

Shared Access Area, Common Areas and any other area or item for which the Association has maintenance responsibilities; (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 or the Governing Documents.

1.12. **Declarant** shall mean and refer to CW The Winnie Partnership, L.P., a Delaware limited partnership, and any successor in interest.

1.13. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The Winnie, and any amendments or supplements thereto.

1.14. **Governing Documents** shall mean and refer collectively to the Plat, Declaration, Articles of Incorporation, Bylaws, and any Rules adopted by the Board.

1.15. **Limited Common Areas** shall mean those portions of the Common Areas specifically designated as Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Lots to the exclusion of other Lots. The Limited Common Areas include the areas and facilities appurtenant to each Lot as shown on the Plat, driveways, porches, decks, and portions of the Common Area bounded by approved fences (if any). The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the provisions in this Declaration and the Design Guidelines. The Board shall have the power and discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

1.16. **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. The Living Unit shall include, without limitation, the garage for the Living Unit, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, foundations, patios, and porches. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located outside said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, fire sprinkler lines and systems, or other utility lines or installations serving only the Living Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be a part of the Living Unit. The attached garage shall be deemed to be part of the respective Living Unit.

1.17. **Lot** shall mean and refer to each of the individual lots within the Project, as shown on the Plat. A Lot shall include the Living Unit or other improvement or structure constructed thereon. Each Lot consists generally of all structures on or within the boundary of the Lot. The Lot shall extend to the center of the Party Wall, which shall form the boundary of the Lots sharing that

wall. Subject to dividing lines between Lots, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it: (1) is part of and an integral part of the Living Unit's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the structure); or (2) was constructed as part of the original construction of the Lot.

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

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

1.20. **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.

1.21. **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.

1.22. **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, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.23. **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.

1.24. **Parcel** as hereinbefore defined shall mean and refer to the real property legally described or illustrated in Exhibit A and any Additional Land annexed into the Project.

1.25. **Party Wall** shall mean and refer to a wall, including without limitation a foundation 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 as a structural partition wall. A Party Wall may be separated by a shaft liner or sound barrier between two or more Living Units.

1.26. **Period of Declarant Control** shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Living Units and all of the Additional Land have been conveyed to Persons other than Declarant or its successors, assigns, and affiliates, regardless of whether such Additional Land has been added hereto; or (2) the Declarant executes and records a written waiver of its right to control the Association. The Special Declarant Rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.27. **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.

1.28. **Plat** shall mean and refer to the final plat(s) for The Winnie filed and recorded in the official records of Davis County. The term Plat shall specifically include any additional or supplemental plat(s) that may be recorded in the future comprising the Additional Land. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.29. **Proceeding** shall mean a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.30. **Project** as hereinbefore defined shall at any point in time mean and refer to The Winnie and shall include the Property.

1.31. **Property** as hereinbefore defined shall include the Parcel, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

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

1.33. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board on behalf of the Association.

1.34. **Shared Access Area** shall mean and refer to the land identified on the Plat as the "Shared Access and Fire Access Easement". The Shared Access Area shall be maintained by the Association. This includes the snow removal from the Shared Access Area, and the maintenance, repair, and replacement of the shared roadway running through the Shared Access Area.

1.35. **Supplemental Declaration** shall mean and refer to a written instrument recorded in the records of the Davis County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

ARTICLE II. PROPERTY DESCRIPTION

2.1 **Submission.** The Declarant hereby confirms that the Parcel described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Property and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2 **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as The Winnie.

2.3 **Description of Improvements.** The improvements contained in the Project will be located upon the Parcel. The major improvements contained in the Project are seven (7) buildings built upon 53 Lots, each Lot containing a Living Unit. Each Living Unit shall have an enclosed garage. The buildings have concrete foundations and are wood framed with an asphalt shingle

roof. There are also other improvements detailed on the Plat, including the Shared Access Area and Common Areas. All improvements shall be constructed in a style and of materials architecturally compatible with the other improvements on the Project, as determined by the Declarant during the Period of Declarant Control, and afterwards, by the ARC. The Lots, their locations, and dimensions are indicated on the Plat. Other Lots and Living Units may be added to the Project on the Additional Land as reserved by the Declarant.

2.4 **Expansion of Project.** The Project may be expanded by the Declarant in accordance with the provisions of Article XII.

ARTICLE 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 and Living Unit in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot and Living Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot and Living Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot and Living Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.

3.3. **Multiple Ownership Interests.** In the event there is more than one (1) 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 conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

3.4. **Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of a contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association who shall maintain a record of ownership of the Lots. 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 notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" as further discussed in Article V.

3.5. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser of his Lot to vote on all matters coming before the

Association for vote provided the same is in writing and is presented to those Association officers conducting such vote as may be further provided in the Bylaws.

3.6. **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Owner shall have a right and easement of use and enjoyment in and to their Lot and Living Unit. In addition, each Owner shall have a mutual and non-exclusive right and easement of enjoyment in, to, and over the Common Areas and Shared Access Area. Such rights and easements shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. The Association shall also have a right and easement of use and enjoyment of the Common Areas, Limited Common Areas, Shared Access Area for the purpose of carrying out its duties and fulfilling its obligations under the Declaration, including, without limitation, landscaping maintenance, snow removal, and the maintenance, repair, and replacement of the private drives and driveways off of the private drives. The Association shall also have a right and easement upon, across, over, or under a Lot or Living Unit as needed to carry out its duties and fulfill its obligations under the Declaration. Other easements may be provided on the Plat.

4.2. **Utility Easement.** There is hereby created an easement upon, across, over, and under the Shared Access Area and other area as may be depicted on the Plat for reasonable ingress, egress, installation, replacement, repair, or maintenance of all utilities, including, without limitation, gas, water, sewer, telephone, cable, telecommunications, and electricity. If any utility company or municipal authority requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Common Areas and Shared Access Area, the Board shall have the power and authority, without the need for any consent by the Owners to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3. **Easements for Ingress and Egress; Easements for Emergency Vehicle Access.** The Shared Access Area is shared with an existing lot and building located on parcel number 01-061-0070 at approximately 3211 S Orchard Drive in North Salt Lake. There is hereby created an exclusive easement for ingress and egress for Owners, through and across, the Shared Access Area. There is also hereby created a perpetual nonexclusive emergency access easement upon, across and over the Shared Access Area for police, fire, medical, and other emergency vehicles and personnel for the purposes of providing police and fire protection and providing any other governmental or municipal service.

4.4. **Limitation on Easement.** An Owner's right and easement for the use and enjoyment of the Common Areas and Shared Access Area shall be subject to the following:

- 1) The right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Shared Access Area or Common Areas;
- 2) The right of the Association to suspend voting rights 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;

3) The right of the Association to dedicate or transfer all or any part of any sewer, water and storm drain lines within the Shared Access Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Following the Period of Declarant Control, any such dedication or transfer must, be assented to by two-thirds (2/3) of the Lot Owners. Any such dedication or transfer during the Period of Declarant Control may be done by Declarant, subject to any required municipal approval.

4.5. **Delegation of Use.** Any Owner may delegate his rights and easements of use and enjoyment to the Shared Access Area and Common Areas to Occupants or contract purchasers who reside on the Property. The rights and privileges of such delegatee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.6. **Party Wall.** Each Owner hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. Each Owner hereby grants to the adjoining Owner of the other Lot that shares the Party Wall, an easement over and upon its Lot for the purpose of maintaining the Party Wall. By accepting a deed to a Lot, 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 and the performance of each Owner's obligation to maintain and repair the townhome structure.

4.7. **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas and Limited Common Areas to perform their duties as assigned by the Governing Documents.

4.8. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner and Occupant shall fully and faithfully comply with the Rules.

ARTICLE V. ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance, repair, and replacement of the Shared Access Area and Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. Owners may not disapprove a budget during the Period of Declarant Control.

5.2. **Covenant to Pay Assessments.** Each Owner of any 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, or Individual Assessments described below, and other fees, charges, levies, and fines as provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used

exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to, payment of the cost of taxes (if any) and insurance; maintenance, repair and replacement of the Shared Access Area and Common Areas; payment of the costs of any Common Expenses; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Governing Documents.

5.4. **Declarant's Assessment Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Lot or Living Unit owned by it until such time as the Declarant elects in writing to pay the Assessments, and only for so long as the Declarant elects to pay Assessments. In addition, the Declarant may exempt Lots owned by Declarant affiliates from the payment of Assessments During the Period of Declarant Control, in the Declarant's sole discretion.

5.5. **Annual Assessments.** 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 (or quarterly if so determined by the Board) on the first day of each and every month (or quarter, if applicable) and no separate notices of such monthly (or quarterly, if applicable) 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.

5.6. **Special Assessments.** The Board may levy Special Assessments 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 Shared Access Area or Common Areas; or for any other Association expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of any Special Assessments and the time for their 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.

5.7. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Shared Access Area, Common Areas, or Limited Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Living Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, drives, sidewalks, planting areas, or portions of the Shared Access Area made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments 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 his/her Occupants' negligence.

5.8. **Allocation of Assessments.** Annual and Special Assessments shall be fixed at a uniform rate for all Lots, except as may otherwise be provided. Individual Assessments shall be allocated separately to each Lot based on the costs incurred by the Association.

5.9. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.10. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.11. **Certificate Regarding Payment.** Upon the request of any Owner, 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, Mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so allowed by the Act.

5.12. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary 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 person who is 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 Shared Access Area 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.

5.13. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the

Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15. **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: Delinquent accounts shall be charged a late fee in the amount of 15% of the Assessment. The late fee shall accrue each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest shall also be added to all unpaid Assessment balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, attorney fees, and/or late fees shall constitute part of the Assessment lien provided above until paid. The Association may by Rule change the amount of the late fee described above.

5.16. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- 1) The Association may suspend such Owner's voting rights.
- 2) 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 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 with 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.
- 3) 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 above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

4) 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.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Shared Access Area and Common Areas, except ingress and egress to an Owner's Living Unit may not be restricted.

6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

5.17. **Power of Sale.** The Owners hereby convey and warrant pursuant to Utah Code § 57-1-20 and § 57-8a-302 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. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.18. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of the Shared Access Area and Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund and analysis duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19. **Reinvestment Fee.** The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established, the following terms and conditions shall govern Reinvestment Fees:

1) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

2) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46 or upon any transfer pursuant to a lender foreclosure.

3) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

4) All transfers of Lots from Declarant to a Declarant related entity shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related entity and if a Reinvestment Fee applies.

5.20. **Association Responsibility After Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay Assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.21. **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

5.22. **Account Payoff Fees.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Shared Access Area, Common Areas, and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and the Governing Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2. **Legal Organization.** The Association is intended to be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

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

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowner's association pursuant to the Act, or any successor thereto;

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

5) 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 or Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

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

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

2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws.

3) **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.

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

5) **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.

6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by the Declarant, if any.

7) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any Person as a Manager; 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, or what is convenient for the management, maintenance, and operation of the Property.

8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted unless otherwise provided herein.

6.5. **Liability.** Board Members and officers 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 all expenses incurred to the maximum extent permitted by law, unless the Director or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Board. During the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

6.7. **Board Indemnification.** Each past and present Board Member (including the Declarant and its appointees) shall be entitled to defense and indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

6.8. **Registration with the State.** In compliance with Utah Code § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

6.9. **Management.** The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project. The Board may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Manager selected by the Declarant, or hire a different Manager.

ARTICLE VII. MAINTENANCE

7.1. **Shared Access Area and Common Area Maintenance.** The Association shall maintain, repair, and replace all Common Areas and Shared Access Area improvements including landscaping and snow removal in the Shared Access Area and the repair and replacement of the shared roadway within the Shared Access Area. In addition, the Association shall maintain the private utility lines serving more than one Living Unit from the connection to the main utility line or the connection from the meter of the third-party provider to the connection to the individual utility line. The improvements required to be maintained by the Association shall be done in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such improvements are intended. Certain utilities may be dedicated to a local municipality, at which point the Association shall no longer have the maintenance, repair, and replacement responsibilities described above.

7.2. **Limited Common Area Maintenance.** The Association shall repair and replace the Limited Common Area driveways. Owners shall be responsible to maintain such driveways in a clean and tidy fashion and remove the snow and ice from thereupon. Owners shall at all times use non-corrosive ice melt, as determined by the Board. If there are any other Limited Common Areas, then such shall be maintained, repaired, and replaced as determined by the Board, including snow removal on the driveways designated as Limited Common Areas on the Plat.

7.3. **Maintenance Allocation Chart.** A maintenance allocation chart has been attached hereto as Exhibit C, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. Unless the maintenance, repair, and replacement obligation is expressly assumed by the Association, such obligation shall be fulfilled by the Owners unless expressly assumed by the Board. In the event of a conflict between this Article VII and Exhibit C, Exhibit C shall control, except as determined by the Declarant or Board following the Period of Declarant Control. Declarant may at any time during the Period of Declarant Control, modify, amend, or revise any portion or all of Exhibit C.

7.4. **Lot and Living Unit Maintenance.** The Association shall maintain the roofs, stucco and other exterior surfaces (excluding windows, window surfaces, doors, patios, decks, and garage doors), soffit, fascia, gutters, and downspouts of the Living Units.

Subject to the architectural controls provided in Article X and unless otherwise provided herein, each Owner shall have the obligation to provide exterior and interior maintenance of the Lot and Living Unit including but not limited to maintenance, repair, replacement, and care of the structural elements of the Lot and Living Unit, foundations, windows, doors, garages, garage doors, patios, porches, and steps. As necessary or desirable, each Owner shall paint, repair, and otherwise maintain the 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. Owners shall own, maintain, repair, and replace all individual utility lines serving only their Lot or Living Unit regardless of location. Notwithstanding the foregoing, each Owner shall also be responsible to maintain the landscaped areas surrounding the Living Units that are enclosed by Owner fences (if any). Owners shall be responsible to maintain, repair, and replace the fences located on their Lots, or which mark the boundaries of their Lots or Common Areas serving their respective Lots (if any). Further descriptions of Owner maintenance, repair, and replacement responsibilities may be contained in the Rules or Exhibit C.

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 solely 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. If 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. If there is a dispute over the responsibility for maintenance or repair of a Party Wall, the Association may, but shall not be required to, intervene and determine each Owner's responsibility. The Association shall have the powers set forth in Section 7.6 below to remedy any neglect in performing Party Wall maintenance responsibilities.

7.6. **Owner Maintenance Neglect.** The Association shall have the power and authority 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 the Living Unit); but only if 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. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot.

7.7. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas and Shared Access Area as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, 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 to which such Lot is subject.

7.8. **Services.** In the discretion of the Board, the Association may provide or contract for services deemed by the Board to be of benefit to the Project in carrying out its obligations hereunder.

7.9. **Utilities.** The charges for utilities that are metered separately to each Lot or Living Unit shall be the responsibility of the respective Lot Owner. In the event water, electrical, sewer, or other utilities are metered collectively or metered separately for Common Areas, then the Association shall be responsible for paying for such utility expenses, which expenses shall be a Common Expense of the Association and shall be paid through regular assessments.

ARTICLE VIII. INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

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 policies, included coverage, or endorsements to other policies.

Insurance premiums shall be a Common Expense.

8.2. Property Insurance.

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

a) 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 permanent fixture, improvement, or betterment installed in or to the Living Unit or otherwise permanently part of or affixed to Common Areas, Shared Access Area, and Living Units, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

b) 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.

c) 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.

d) 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.

e) 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 Property 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.

2) **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:

- a) The Association's policy provides primary insurance coverage, and;
- b) Notwithstanding Subsection a) above, and subject to Subsection c) below:

- i) the Owner is responsible for the Association's policy deductible; and

- ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

- c) An Owner that has suffered damage to any combination of 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 ("a 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

- d) If an Owner does not pay the amount required under Subsection c) above within thirty (30) days after substantial completion of the repairs to, as applicable, the Living Unit the Association may levy an individual Assessment against the Owner for that amount.

3) Association's Obligation to Segregate Property Insurance Deductible.

The Association shall maintain 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.

4) 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.

5) Notice Requirement for Deductible.

The Association shall provide notice to each Owner of the Owner's obligation under Subsection 2(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. 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 and

Shared Access 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 a claim because of the negligent acts of the Association or another Owner.

8.4. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

8.5. Theft and Embezzlement Insurance. The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

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

8.7. 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.

8.8. Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under the Association's insurance policies as required by law.

8.9. 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.

8.10. **Insurance Trustee.** In the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of Association's voting interests, 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.

8.11. **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.

8.12. **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.

8.13. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Shared Access Area and 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 a single-family Living Unit and are restricted to such use except as otherwise provided herein. 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, that the activities would not be in violation of applicable local ordinances, that the business activity does not involve the solicitation of Occupants or Owners, that the business activity does not involve the parking of vehicles on the Shared Access Area, and the business will not result in an increase to the Association's insurance premiums. 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.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, Common Areas, or Shared Access Area, nor shall anything be done or placed on any Lot, Common Areas, or Shared Access Area which interferes with or jeopardizes the quiet enjoyment of others, 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 Project 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 suspended, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Motor Vehicles.** No inoperable, unlicensed, or unregistered vehicle shall be parked at the Project except inside a closed garage and then only for a temporary time to allow the vehicle to be repaired. However, no motor vehicle of any kind shall be repaired, constructed, or reconstructed within the Project, including upon any Lot or Shared Access Area, except for emergency repairs to vehicles.

9.5. **Parking.** Street parking and parking on any private lane or private drive is prohibited. Residents shall first utilize their garages before parking elsewhere in the Project. Additional resident and visitor parking is available in various shared parking stalls throughout the Project. The Board of Directors is authorized to adopt and implement reasonable Rules expanding or varying these restrictions pertaining to parking within the Project. The Board of Directors may hire at their discretion a third-party parking enforcement company to enforce any Rules, including the towing of any vehicles in violation of this Section or other parking Rules.

9.6. **Pets.** Up to two (2) domestic pets per Living Unit are allowed. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive. Savage or dangerous animals are prohibited, as determined by the Board. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including, but not limited to, requirements for registration, the use of leashed and noise barking limitations, and the types of pets that will be allowed at the Project. All pets must be registered with the Association within ten (10) days of occupancy of a Living Unit. All pets must be properly licensed and registered with the appropriate governmental agency and be in compliance with all applicable municipal ordinances and regulations. Pets shall abide by all pet Rules adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Shared Access Area, Common Area, or the Lot of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Shared Access Area and shall be leashed or under the immediate control of its owner whenever outside the Living Unit. Pets that routinely violate Rules and/or create a nuisance, as determined in the discretion of the Board, are subject to removal upon request of the Board.

9.7. **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. Machinery or equipment used by the Association or its contractors for the maintenance of the Common Areas shall not be subject to the restrictions of this Section.

9.8. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on, or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment

of their property. A nuisance includes but is not limited to the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Living Unit, Lot, Shared Access Area, or Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot, Shared Access Area, or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing, or material upon any Lot or in the Common Areas or Shared Access Area that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas or Shared Access Area;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invites;
- 8) Too much noise or traffic in, on or about any Lot, Shared Access Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers; and
- 9) Allowing a pet to: be unleashed while outside of the Living Unit; urinate or defecate in the Common Areas; failing to immediately clean up feces deposited by a pet in the Common Area; make continuous barking, meowing, or other animal noises.

9.9. **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. Unless otherwise designated in the Rules, no signs whatsoever (including, without limitation, commercial and political signs) shall be erected or maintained on any Lot, except:

- 1) Signs required by legal proceedings;
- 2) One (1) standard "for sale" It or "for lease" sign that may be displayed in the window of a Living Unit; and
- 3) Other signs approved by the Board.

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. Containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection as set forth by the Board.

The Association may provide garbage cans and waste removal services as determined by the Board. The Association may adopt additional Rules for the storage and concealment of trash containers.

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 not required to, enter a Living Unit to ensure that it is in compliance with this and the following Section.

9.12. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for items approved by the Board like patio furniture, and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the Architectural Review Committee which may include the regulation of colors, materials, and product types. The Association may vary or expand upon the provisions of this Section by Rule.

9.13. **Window Coverings.** Every Owner of a Living Unit shall be obligated to ensure that window coverings are installed within the Living Unit within one (1) month of purchasing or taking possession of the Living Unit. Furthermore, the Board of Directors is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.

9.14. **Leases.** The leasing, renting, or granting of occupancy (hereinafter in this Section referred to as a "lease") of a Living Unit is permitted. **In accordance with all valid laws, zoning ordinances, and regulations, each Owner by acceptance of a deed or other document of conveyance acknowledges and agrees that the Living Units may be leased on a nightly, weekly, monthly, or other periodic basis, and that vacation and other short-term leases are expressly permitted.** All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Owners whose tenants frequently violate the Governing Documents, as determined by the Board, may have his/her short-term leasing rights (less than 30 days) revoked for a period of time determined in the sole discretion of the Board, not to exceed six (6) months. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner or Occupant fails to act accordingly, the Board may initiate eviction Proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. Copies of all lease agreements shall be provided to the Board upon request. Owners who lease their Living Unit for a term greater than one (1) month shall, within seven (7) days of tenant occupancy, provide the Board with the names, phone numbers, and email addresses of all adult tenants, as well as the tenants' vehicle description(s).

9.15. **Solar Energy Systems.** Solar energy systems and attendant equipment are prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Rules. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Living Unit. Solar panels or other equipment shall not be installed so as to be visible from the roads or drives in the Project without prior approval from the ARC as

a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The ARC or the Board shall have the sole discretion to determine compliance with the design guidelines set forth in the Rules and this Section.

9.16. **No Subdivision**. No Lot shall be further subdivided by any Owner into smaller Lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred, or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from re-plating the Project or re-subdividing any Lot.

9.17. **Variances**. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association, other Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

9.18. **Declarant Exception**. So long a the Declarant owns a Unit in the Project, the Declarant shall be exempt from the restrictions contained in this Article.

ARTICLE 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 harmonize with existing surroundings and structures. The ARC need not be composed of Owners. If the ARC is not appointed, the Board shall perform the duties required of the ARC. The Declarant shall act as the ACC during the Period of Declarant Control.

10.2. **Architectural Control**. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ARC. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, fencing, repairs, excavation, patio covers, screens, windows, doors, fences, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Property. If the Board approves the changes, it may designate the design, color, style, model, and manufacturer of any such change. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ARC. Any structural change may be denied by the Board, and the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the

Board, that the structural changes will be constructed in a way to prevent any impact on the physical integrity of the building or other Living Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like. The ARC may, in its sole discretion, require any maintenance, repair, and replacement work of Owners to be performed by an approved contractor that is actively and properly licensed in Utah, is in good standing with the state of Utah, and who carries insurance in accordance with Utah insurance requirements.

10.3. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Lots, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project. The Declarant may use Lots and other areas for parking in connection with the showing of model homes or for vehicles necessary for development and construction activities.

10.4. **Liability for Damages.** The Board and/or the ARC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article X.

ARTICLE XI. ENFORCEMENT

11.1. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be personally jointly and severally liable for any fines for violations thereof.

11.2. **Enforcement of Governing Documents.** The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). 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 attorney fees. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XII. SPECIAL DECLARANT RIGHTS

12.1. **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any improvements shown on the Plat or intended to be included in the Project;
- 2) Any Lots and corresponding Living Units upon all or any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Project; and

3) Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2. Expandable Project. The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Living Units to be constructed thereon, all in accordance with the provision of this Section.

1) The Project may be expanded by the addition of any portion of other real property designated by the Declarant, such real property or portions thereof where applicable being referred to as "Additional Land".

2) Expansion or contraction of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

3) Declarant's right to expand or contract the Project as provided in this Section shall not expire until the Declarant elects in writing to not add the Additional Land to the Project.

4) The Additional Land may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.

5) To submit Additional Land to the Project, the Declarant shall record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include: (i) a description of the Additional Land added to the Project; (ii) the designation of each Lot created within the Additional Land; and (iii) shall reference this Declaration and state that the provisions of this Declaration apply to the Additional Land.

12.3. Other Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the entire Period of Declarant Control, or for the maximum period allowed by law:

1) the right to maintain sales offices, model Living Units, and signs advertising the Project at any location within the Project;

2) the right to use easements through the Common Areas, Shared Access Area, and Lots as set forth in this Declaration;

3) the exclusive right to act as the Board of Directors, or appoint or remove members of the Board during the Period of Declarant Control;

4) the right to dedicate the roads and drives within the Project for and to public use, to grant road easements with respect thereto, and to allow such road or drive to be used by owners of adjacent land;

5) the right to convert any part of the Project to a different regime of residential ownership;

6) the right to create or designate additional Common Area or Limited Common Area within the Project;

7) the right to freely market the Project as determined exclusively by Declarant,

including, without limitation, the right to place signs and other advertising materials at any location within the Project or upon any Living Unit, Lot, Common Area, Shared Access Area, and so forth;

8) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;

9) the right to withdraw land from the Project for up to fifteen (15) years from the date this Declaration is recorded in the office of the Davis County Recorder;

10) the right to set all Assessments for the Association including annual, special, and individual assessments;

11) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;

12) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;

13) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

14) the right to make and adopt Association Rules without being subject to the requirements of § 57-8a-217 of the Act; and

15) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

12.4. Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will excise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.5. Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.6. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas or Shared Access Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas and Shared Access Area as originally constructed or created by Declarant.

12.7. Transfer of Special Declarant Rights. The Declarant may transfer, convey, or

assign its rights, in whole or in part, created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Davis County Recorder.

12.8. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Living Unit prior to the contracting for the conveyance of the Living Unit to a purchaser.

12.9. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non- exclusive easements and rights of way over or upon those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement", Shared Access Area, or otherwise designated as an easement area over any Common Areas on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

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

3) Easement granting the privilege of entering upon the Shared Access Area and Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Shared Access Area and Common Areas for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities

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

12.10. **No Modification of Declarant Rights.** The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively

or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

ARTICLE XIII. RIGHTS OF LENDERS

13.1. **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. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

13.2. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

13.4. **Department of Veterans Affairs Loans.** To the extent that any provision in the Governing Documents is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs ("DVA Financing"), such provision shall not apply to any Living Unit that is (i) encumbered by DVA Financing, or (ii) owned by the Department of Veterans Affairs.

13.5. **Single-Entity Ownership Limitations.** The number of Lots permitted to be owned by a Single-Entity shall not exceed twenty percent (20%) of the total Lots within the Association. Lots owned by the Declarant are not subject to the Single-Entity ownership cap. The Board may adopt Rules and reporting procedures to track the number of Lots owned by a Single-Entity to ensure consistent administration and enforcement of this ownership restriction. For the purpose of this Section, the term "Single-Entity" means the same natural individual, investor group, partnership, entity, or corporation. If an individual or entity has a 25% or greater share of ownership, control, and right to profits and losses of another entity, then such entity and its owner(s) shall be considered a Single-Entity. If title to a Lot is obtained in violation of this Section, then: (i) the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board; and (ii) the Board may proceed with any available legal remedies, including, without limitation, an action to obtain a court order requiring the Owner to immediately sell or transfer ownership of the Lot.

13.6. **Investor Ownership Limitation.** The Number of Lots permitted to be owned by an Investor shall not exceed fifty percent (50%) of the total Lots in the Project. For the purpose of this Section, the term "Investor" means: (1) a Person who owns a Lot, but does not occupy the Living Unit as the Investor's primary residence, or (2) in the case of a Lot

owned by a trust or registered business entity, the natural individual(s) who own the entity or are beneficiaries of the trust do not occupy the Living Unit as their primary residence.

ARTICLE XIV. RIGHT OF ENTRY

14.1. **Right to Enter Lots and Living Units.** 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.

ARTICLE XV. AMENDMENTS

15.1. **Amendments by Declarant.** So long as the Declarant owns one or more Lots in the Project or any part of the Additional Land, the Declaration and the Plat may be amended unilaterally by the Declarant without any additional approval requirement. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent. Amendments shall become effective upon recordation in the office of the County Recorder.

15.2. **Amendments by Association.** After all of Declarant's Lots have been sold to third parties and all Additional Land has been annexed into the Project and the Period of Declarant Control has expired, this Declaration and the Plat may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. 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 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. Notwithstanding, the foregoing, the Members' authority to amend Articles XII and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVI shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

ARTICLE XVI. DISPUTE RESOLUTION

16.1. **Dispute Resolution.** Declarant, Association, its officers and Directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

1) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- b) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- c) The proposed remedy;
- d) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- e) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

2) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

3) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days from the original Notice, except as may be limited by Section 16.2 below.

4) Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, in addition to the requirements and limitations set forth in Section 16.2 below, the Association shall:

- a) Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
- b) Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

c) Receive approval from at least two-thirds (2/3) of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

5) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

6) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; and (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than seventy-five percent (75%) of the total voting power of the Board, and (c) the Declarant during the Period of Declarant Control. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

7) The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, Utah Code § 57-8a-229.

8) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

16.2. MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT. In addition to the requirements and procedures set forth in Section 6.1 above, the Association and each Owner is deemed to have accepted and agreed to comply with the terms of this Section 16.2.

1) Any and all claims, controversies, breaches, or disputes (each a "Dispute") involving the Declarant or any affiliate of the Declarant, and any Owner or the Association

(individually referred to as a "Party" or collectively referred to as the "Parties") arising out of or related to this Declaration, the Lots, Living Units, the sale of a Lot or Living Unit, or any transaction related thereto, whether such Dispute is based on contract, tort, statute, or in equity, including, without limitation, any Dispute over: breach of contract, negligent or intentional misrepresentation or fraud, nondisclosure, breach of any alleged duty of good faith and fair dealing, allegations of latent or patent construction defects, breach of any fiduciary duty, or any other matter arising out of or related to the interpretation of any term or provision of this Declaration, sales agreement, or otherwise, may, at the election of either Party, be arbitrated pursuant to the Federal Arbitration Act (9 U.S.C. §1, et seq.) ("FAA") and subject to the procedures set forth in Sections 16.1 and 16.2.

2) If elected by either Party, such Dispute shall be submitted to binding arbitration by and pursuant to the rules of the American Arbitration Association ("AAA"), pursuant to its construction arbitration program, or such alternative as mutually agreed by the Parties. If AAA is not available and the Parties involved in the Dispute are unable to agree on another alternative, then either Party may, pursuant to the applicable provisions of the FAA, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the Parties. The rules and procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

3) The following are general arbitration provisions:

a) The matters herein involve and concern interstate commerce and are governed by the provisions of the FAA now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the FAA.

b) To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the arbitration service rules shall govern the conduct of the proceeding.

c) This Section 16.2 shall inure to the benefit of, and be enforceable by, the Declarant, affiliates of the Declarant, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom the Association or Owner contents is responsible for any alleged defect in or to the Project.

d) In the event any dispute is submitted to arbitration, each Party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration, unless the arbitrator orders otherwise.

e) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. The Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in Davis County.

f) The participation by any party in any judicial proceeding concerning this Section 16.2 or any matter arbitration-able hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 6.11. Attorneys' fees and costs shall be borne pursuant to (d) above.

g) The fees to initiate the arbitration shall be advanced by the Party bringing the Claim and subsequent fees and costs of the arbitration and/or arbitrator shall be borne equally by the Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator shall ultimately be borne as determined by the arbitrator.

h) The arbitrator appointed to serve shall be a neutral and impartial individual.

i) If any provision of this Section 16.2 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

All parties governed by this Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 16.2 decided in a court or by a jury trial.

16.3 **Owner Warranties.** The Declarant may provide certain warranties to the Owners related to a Lot purchased. The first Owner of a Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

16.4 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas.

16.5 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

16.6 The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

ARTICLE XVII. MISCELLANEOUS

17.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes. Association notices may also be sent to an Owner as allowed by the Act or the Utah Revised Nonprofit Corporation Act.

17.2. **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 and as further allowed by applicable laws, including the Act and the Utah Revised Nonprofit Corporation Act.

17.3. **Dissolution.** The Association may be dissolved by the affirmative assent in writing

from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make Assessment payments for the maintenance and upkeep of the Common Areas, Shared Access Area, , curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V of this Declaration.

17.4. **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.

17.5. **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.

17.6. **Fair Housing Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under the Fair Housing Act, as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

17.7. **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.

17.8. **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and the taking does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring the area adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in

the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

17.9. **Attorney Fees.** If the Association utilizes legal counsel to enforce any Restriction, or after an Owner communicates or demonstrates an intent not to comply with a Restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Section to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

17.10. **Security.** The Declarant or 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, Declarant, 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, DECLARANT, 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.

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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 17th day of June, 2019.

DECLARANT

**CW The Winnie Partnership, L.P.,
a Delaware limited partnership**

By: [Signature] on
behalf of CW The Winnie, LLC, as general partner of
CW The Winnie Partnership, L.P.

State of Utah)
County of Davis) ss.

On the 17th day of June, 2019, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he is authorized to sign this document as a representative of CW The Winnie, LLC, which is a general partner of CW The Winnie Partnership, L.P., a Delaware limited partnership, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: [Signature]



EXHIBIT A
LEGAL DESCRIPTION

All of **THE WINNIE - PHASE 1**, according to the official plat on file in the office of the Davis County Recorder.

More particularly described as:

Beginning at a point on the southeasterly right-of-way line of Orchard Drive; said point being South 00°16'44" East along the section line, 1135.06 feet and South 89°43'16" West, 1053.19 feet from the Northeast corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian; and running thence South 46°08'54" East, 43.53 feet to point on a 21.00 foot radius curve to the left; thence 16.16 feet along said curve through a central angle of 44°04'51" (chord bears South 68°11'20" East, 15.76 feet); thence North 89°46'14" East, 175.95 feet; thence North 00°13'46" West, 158.00 feet; thence North 40°09'00" East, 49.80 feet; thence South 49°51'00" East, 66.14 feet; thence North 89°23'41" East, 69.02 feet to a point on the Plum Tree Condominium Phase 1 and Phase 2 westerly boundary line; thence South 00°36'19" East, along said westerly boundary line, 153.68 feet; thence South 89°46'05" West, 34.50 feet; thence South 00°36'19" East, 295.86 feet to a point on a 20.00 foot radius curve to the right; thence 31.55 feet along said curve through a central angle of 90°23'19" (chord bears South 44°34'53" West, 28.38 feet) to a point of tangency on the northerly right-of-way line of 3400 South Street; thence South 89°46'05" West, along said northerly right-of-way line, 236.72 feet to a point on the easterly edge of an existing building and the projection thereof; thence along said existing building easterly edge and projection thereof the following three (3) courses: North 00°25'15" East, 74.00 feet; thence North 89°48'37" West, 0.74 feet; thence North 00°14'28" East, 192.09 feet; thence North 89°54'58" West, 158.35 feet to a point on the southeasterly right-of-way line of Orchard Drive; thence along said southeasterly right-of-way line the following two (2) courses: said point also being on a 583.52 foot radius curve to the right; thence 9.53 feet along said curve through a central angle of 00°56'09" (chord bears North 39°15'57" East, 9.53 feet); thence North 39°44'01" East, 101.80 feet to the point of beginning.

Contains: 2.61 Acres

Parcel Numbers Not Assigned.

EXHIBIT B
BYLAWS OF
THE WINNIE OWNERS ASSOCIATION, INC.
NORTH SALT LAKE, DAVIS COUNTY, UTAH

These BYLAWS OF THE WINNIE OWNERS ASSOCIATION, INC. are effective upon recording in the Davis County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as The Winnie and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration for The Winnie.

ARTICLE II
APPLICATION

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III
OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and

time for the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.2 Special Meetings. Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 Place of Meetings. The Board may designate any place in Davis or Salt Lake County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or its Manager.

3.4 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Lot shall be deemed to be the Owner's registered address and notice to the Lot address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The Persons appearing in the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 Quorum. At any Owner meeting duly called and held in compliance with the notice and other requirements of these Bylaws, the number of Owners present, either in person or by proxy shall constitute a quorum for the transaction of business.

3.8 Proxies. At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy, provided, however, that the right to vote by proxy shall exist only where the

instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 Votes. With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of a Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts as amended. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 Minutes of Meetings. The Secretary, or the Manager, shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be available to requesting Owners within sixty (60) days of the annual meeting.

ARTICLE IV BOARD OF DIRECTORS

4.1 **Powers.** The Project and the business and affairs of the Association shall be governed and managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts, except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The Board of Directors shall be composed of three (3) persons. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Unit in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such Person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the Qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Period of Declarant Control, Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.

4.5 **Regular Meetings.** The Board shall hold meetings at least quarterly or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 **Meeting Notice.** The Person or Persons authorized to call Board meetings may fix any place, within Davis or Salt Lake County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message, at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.9 Owner Attendance. Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.10 Open Meetings. Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel, or to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.11 Board Meetings Generally. The Board may designate any place in Davis or Salt Lake County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 Board Action. Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 Compensation. No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be

removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by a vote of a majority of the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies**. If vacancies occur in the Board during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 **Action Without a Meeting**. Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code § 16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.17 **Waiver of Notice**. Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment**. The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting**. A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

5.1 **Officers**. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall not be required during the Period of Declarant Control.

5.2 **Election, Tenure, and Qualifications**. The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies.** If a vacancy occurs in an office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board of Directors.

5.8 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager.

5.9 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond

those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to a Board Member or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

6.5 **Vacancies.** If a vacancy occurs in a committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise,

both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII RULES AND REGULATIONS

8.1 **Rules.** The Board shall have the authority to adopt and establish Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

ARTICLE IX AMENDMENTS

9.1 **Amendments by Declarant.** So long as the Declarant owns one or more Lots in the Project, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarant's unilateral amendment right as designated herein may continue past the expiration of the Period of Declarant Control. No other amendment shall be valid or enforceable during the period Declarant owns at least one Lot unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Lot shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Davis County Recorder.

9.2 **Amendments by Association.** After Declarant has sold all of the Lots to third parties, and the Period of Declarant Control has expired, the Bylaws may be amended by the Owners upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the Davis County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote 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 vote 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 Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association.

DATED this 12th day of June, 2019.

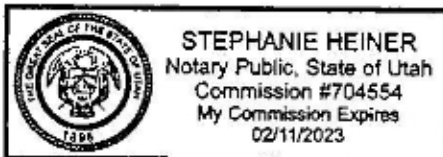
DECLARANT

**CW The Winnie Partnership, L.P.,
a Delaware limited partnership**

By: Dulce Baker on behalf
of CW The Winnie, LLC, as general partner of CW
The Winnie Partnership, L.P.

State of Utah)
County of Davis) ss.

On the 12th day of June, 2019, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he is authorized to sign this document as a representative of CW The Winnie, LLC, which is a general partner of CW The Winnie Partnership, L.P., a Delaware limited partnership, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.



Notary Public: [Signature]

EXHIBIT C MAINTENANCE ALLOCATION CHART

General Note: shared items are to be resolved between the Owners in use of the item.

ITEM	HOA	OWNER	NOTES
A/C Pad & Unit		X	
Address Numbers		X	*Must be approved by ARC
Attic		X	
Cable/Satellite TV		X	*Must be approved by ARC
Ceiling		X	
Circuit Breakers for Unit		X	
Common Area amenities	X		
Door and Door Frames - Exterior		X	*Must be approved by ARC
Door and Door Frames - Interior		X	
Door Hardware/doorbell		X	*Must be approved by ARC
Door steps/stoops/porch		X	*Must be approved by ARC
Drains – Living Unit & Patio/Porch		X	
Dryer Vent Cleaning and Repair		X	
Electrical Wiring/Panel		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc)	X		
Fencing bounding a Lot		X	*Must be approved by ARC
Fireplace, Flue, & Vent Pipes – Cleaning & Repair		X	
Floor Coverings		X	
Foundation - Structural		X	
Foundation – Cracks, cosmetic		X	
Furnace		X	
Garage Door Openers, Springs, Hinges, Parts		X	*Must be approved by ARC
Garage Doors Paint, Repair, Replace		X	*Must be approved by ARC
Gas Pipes		X	
Hose Bib/Faucet/Spigot		X	
Hot Water Heater		X	
Insurance Coverage – Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - Loss Assessment		X	
Insurance Deductible	X	X	Deductible assessed to Owners pro-rata according to losses. HO6 deductible is Owners responsibility. HOA responsible for deductible on Common Area loss.
Irrigation Lines / Heads - outside yard areas	X		
Landscape – outside fenced yard areas	X		
Landscape – fenced yard area		X	If applicable
Landscape Drains Around Building	X		
Landscape Drains – inside fenced yard area		X	
Lights – eaves, porch & garage fixtures & bulbs		X	*Must be approved by ARC
Limited Common Areas – driveways - other Limited Common Areas	X	X	*Must be approved by ARC - HOA repair and replace driveways; Owners to keep clean and remove ice and snow from driveways - Board decision
Mailbox & Stand/Structure		X	USPS
Mailbox Lock & Key		X	
Paint - Exterior wall surfaces and trim finishes	X		
Paint – Exterior doors, garage doors, windows		X	*Must be approved by ARC
Paint – Interior		X	

Patio Slab		X	*Must be approved by ARC
Pest Control Interior		X	
Phone Lines		X	
Plumbing Valves, Pressure Regulator		X	Point of connection/Meter to the living unit – Owner Before point of connection/Meter – HOA.
Plumbing Main Line		X	Point of connection/Meter to the living unit – Owner Before point of connection/Meter – HOA.
Plumbing Leak		X	Point of connection/Meter to the living unit – Owner Before point of connection/Meter – HOA.
Plumbing – Clogging/Stoppage		X	Point of connection/Meter to the living unit – Owner Before point of connection/Meter – HOA.
Plumbing Pipes Inside Unit		X	
Rain Gutters – clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Roof – repair & replacement	X		
Roof Leak	X		
Screen Doors		X	*Must be approved by ARC
Sewer pipes – serving Living Unit		X	
Sewer pipes - serving more than one Living Unit	X		
Sidewalks, paths on Common Areas	X		
Sliding Glass Doors		X	
Snow Removal – Driveways and paths to unit		X	
Snow Removal – Private Roads (per Plat)	X		
Storm Drains	X		
Street Lights	X		
Streets – Private	X		
Termites, pests, rodents, insects, etc.		X	
Trash	X		
TV Reception		X	
Vent covers - Exterior		X	*Must be approved by ARC
Walkways to individual unit – not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Water - Culinary		X	
Water - Landscape	X		*Unless metered to Lot Owner
Weather stripping		X	
Windows – Glass, Screens, Frames & Wells		X	*Must be approved by ARC

**** Unless expressly deemed herein to be an Association maintenance obligation, the maintenance obligations shall be fulfilled by Owners, unless expressly assumed by the Board. Declarant may unilaterally amend this Exhibit C during the Period of Declarant Control.**