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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/03/2020 10:00 AM
FEE \$50.00 Pgs: 52
DEP RT REC'D FOR FRUIT HEIGHTS CIT
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WHEN RECORDED, RETURN TO:
CW The Heights, LLC
Attn: Legal Department
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

Affecting Parcel Number(s): 07-347-0001 thru 0015

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

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE HEIGHTS (“Declaration”), is made and executed as of the date first written below on the signature page and is effective when recorded in the office of the Davis County Recorder by CW The Heights, LLC, a Utah limited liability company (“Declarant”).

RECITALS

A. Declarant is the fee title owner and developer of certain real property located in Fruit Heights, Utah as more particularly described on Exhibit A attached hereto (the “Property”). The Property has been or will be developed as a planned unit development.

B. Declarant hereby establishes and adopts this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for The Heights to establish a governance structure and standards and procedures for the development, administration, maintenance, and preservation of The Heights.

C. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant, and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, an Owner joins in and accepts the intent purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant’s development of the Project and accepts the burdens and responsibilities that accompany these benefits.

D. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

DECLARATION

NOW, THEREFORE, for the reasons recited above and subject to the Restrictions set forth below, the Declarant hereby adopts this Declaration. The Recitals above are incorporated into and made a part of this Declaration.

1. DEFINITIONS

1.1 **"Accessory Structure"** shall mean and refer to any detached, subordinate building or structure incidental to the primary residence constructed on the Lot and shall include any shed, shack, detached garage, or other outbuilding that is one hundred (100) square feet or larger.

1.2 **"Act"** shall mean and refer to the Utah Community Association Act codified beginning at §57- 8a-101, Utah Code Annotated ("Utah Code Ann."), as amended.

1.3 **"Allocated Interest"** shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.

1.4 **"Articles"** shall mean and refer to the Articles of Incorporation for the Association, as amended from time to time.

1.5 **"Assessment"** shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration and shall include, without limitation, regular Assessments, special Assessments, Benefitted Common Area Assessments, and Service Area Assessments.

1.6 **"Association"** shall mean and refer to The Heights Owners Association, Inc., the membership of which shall include and be comprised of each Owner in the Project, and its successors or assigns. The Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.

1.7 **"Benefitted Common Area"** shall mean and refer to any real property and improvements designated by the Declarant in a Supplemental Declaration or Plat or in another recorded instrument (which designation is made in the sole and absolute discretion of the Declarant) as Benefitted Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefitted Common Area Assessments attributable thereto, to one or more but less than all the Units within the Project and which is or will be conveyed to the Association or as to which the Association will be granted the rights and obligations for primarily the benefit of a particular Units within the Project. The Supplemental Declaration, Plat or other recorded instrument establishing the Benefitted Common Area shall identify the Units assigned to that

Benefitted Common Area and shall further identify whether the purpose of the Benefitted Common Area is for exclusive use of the Owners and Occupants of the assigned Units and payment of the Benefitted Common Area Assessments, or only for the purposes of paying the Benefitted Common Area Assessments attributable thereto.

1.8 **"Benefitted Common Area Assessments"** shall mean and refer to assessments levied against the Units assigned to a Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.9 **"Benefitted Common Area Expenses"** shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace a particular Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.10 **"Board of Directors"** or **"Board"** shall mean and refer to the body with primary authority to manage the affairs of the Association.

1.11 **"Bylaws"** shall mean and refer to the Bylaws of the Association and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded. The Bylaws are attached hereto as Exhibit B and incorporated herein by this reference.

1.12 **"City"** shall mean and refer to Fruit Heights City, a political subdivision of the State of Utah, located in Davis County, Utah.

1.13 **"Common Area and Facilities"** shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or property of a designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat, including any area designated as open space not dedicated to the City; (b) the Entry Monument; (c) the Recreational Amenities, if any; (d) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area; (e) any fence or wall on common property; (f) any roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City or designated as Benefitted Common Area; or (g) and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, the and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned by the Association.

1.14 **"Common Expenses"** shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers,

accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.15 "**Community-Wide Standards**" shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or initially established by the Declarant consistent with the requirements of the Development Agreement and/or standards described in this Declaration, or Rules. The Community-Wide Standards may or may not be set forth in writing.

1.16 "**Declarant**" shall mean and refer to CW The Heights, LLC, a Utah limited liability company, and their respective affiliates, successors, and assigns.

1.17 "**Declarant Control Period**" shall mean and refer to the period of time commencing with the recording date of this Declaration and expiring the date the Declarant executes and records a written waiver of its rights to control.

1.18 "**Design Guidelines**" shall mean and refer to The Heights Design Guidelines established for the Project as set forth in Section 9 of this Declaration, as amended.

1.19 "**Design Review Board**" shall mean and refer to the body responsible for review and approval of home and landscaping plans, construction and installation of the improvements identified therein in conformance with the requirements of the Design Guidelines.

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

1.21 "**Entry Monuments**" shall mean and refer to any and all entry monument and markers and adjacent landscaped common area constructed at the entrances to the Project.

1.22 "**Governing Documents**" shall mean and refer to this Declaration, including the Design Guidelines, the Plat, the Articles, the Bylaws, the Rules, and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.

1.23 "**Lender**" shall mean and refer to a holder of a first mortgage or deed of trust on a Unit.

1.24 "**Lot**" shall mean and refer to an individual lot created on the Plat on which an attached or detached single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as "Lots."

1.25 "**Manager**" shall mean and refer to the Person or Persons engaged by the Board of Directors to manage the affairs of the Association and Project.

1.26 "**Occupant**" shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.27 "**Owner**" shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Davis County Recorder. The term "Owner" shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" also shall not include the Declarant. More than one Owner is referred to herein as "Owners".

1.28 "**Person**" shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as "Persons."

1.29 "**Plat**" shall mean and refer to the record of survey map or maps for The Heights and any portions thereof, recorded with the Davis County Recorder, and all recorded amendments and supplements thereto.

1.30 "**Proceeding**" shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.31 "**Project**" shall mean and refer to The Heights planned unit development and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time the Supplemental Declaration and plat map for the additional land is recorded.

1.32 "**Property**" as previously defined herein, shall include the real property made subject to this Declaration and all easements and rights appurtenant thereto.

1.33 "**Recreational Amenities**" shall mean and refer to any and all of the recreational improvements, if any, constructed in the Project which shall be owned and maintained by the Association for the exclusive use and benefit of Owners and Occupants in the Project and which shall be subject to further Rules regarding use and fees, consistent with the Act.

1.34 "**Restrictions**" shall mean and refer to any one or all of the terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth in the Governing Documents.

1.35 "**Rules**" shall mean and refer to the rules and regulations and policies adopted by the Association.

1.36 **"Service Area"** shall mean and refer to a group of Units designated as a separate Service Area pursuant to this Declaration for the purpose of receiving services or benefits from the Association which are not provided to all Units within the Project. A Service Area may be comprised of more than one type of dwelling and may include noncontiguous Units. A Unit may be assigned to more than one Service Area.

1.37 **"Service Area Assessments"** shall mean and refer to assessments levied against the Units in a particular Service Area to pay for Service Area Expenses.

1.38 **"Service Area Expenses"** shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Units within a particular Service Area, which may include amounts for reserves for capital repairs and replacements.

1.39 **"Subdivision"** shall mean and refer to The Heights development, including all Units, Common Area and Facilities, and other property within the Project as shown on the Plat covering the entire Property.

1.40 **"Subdivision Improvements"** shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public road access and/or utility service to the Units, and includes such other and further construction or installations required to comply with any requirement of the Development Agreement.

1.41 **"Supplemental Declaration"** shall mean and refer to any amendment or supplement to this Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in the Declaration. A Supplemental Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area. A Supplemental Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

1.42 **"Unit"** shall mean and refer to a subdivided Unit, within the Subdivision depicted as a separately identified parcel on the Plat or a survey, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residential unit. The term "Unit" refers to land, if any, which is part of a Unit, including the Lot, as well as to any structures or other improvements on the Unit. In the case of a building or other structure containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land shall be considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term "Unit" does not include Common Area and Facilities, common property of any Benefitted Common Area, or property dedicated to the City or the public.

2. THE PROJECT

2.1. **Binding Effect of Governing Documents.** The Declarant hereby declares and Association hereby confirms that the Property is part of the Project and Association and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Restriction in the Governing Documents.

2.2. **Nature of Project.** The Project is a planned unit development. The Project is not a cooperative and is not a condominium.

2.3. **Project Name.** The Project is named "The Heights". Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and on the Plat. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.

3. **UNITS, COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS**

3.1. **The Unit.** The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit. Each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

3.1.1. **Variances between the Plat and As-Built Construction.** The Original Construction (defined below) shall be the controlling dimension for any Unit. The original construction shall be the initial installation of foundations, framing, wallboard, and the like (the "**Original Construction**"). The Board of Directors may, in its sole discretion, determine if the present construction varies from the Original Construction. If the Board of Directors determines that the present construction varies from the Original Construction, then the Association, at the expense of the Association or the Owner, may require that the present construction be made to comply with the Original Construction.

3.2. **Allocated Interest of Each Unit in the Votes of the Association.** The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth herein. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.

3.3. **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application or controlling law.

4. **ASSOCIATION GOVERNANCE AND ORGANIZATION**

4.1. **Association Organization.** The Association shall be organized as a Utah non-profit corporation and shall serve as the organizational body for all Owners. To the extent possible, all documents related to the organization of the Association shall be consistent with the terms in this Declaration and the Bylaws or any lawful amendment thereto. The Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

4.2. **Membership.** Membership in the Association shall at all times be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. Membership in the Association is mandatory.

4.3. **Availability of Documents.**

4.3.1. Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and the Utah Revised Nonprofit Corporation Act.

4.3.2. Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Association as may be required by the Act and the Utah Revised Nonprofit Corporation Act.

4.3.3. Notwithstanding anything to the contrary in this Section 4.3, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Board, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.

4.4. **Board of Directors.** The governing body of the Association shall be the Board of Directors selected pursuant to the Bylaws, subject to the provisions herein. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Board, in all instances except those explicitly reserved to the Owners, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in the Declaration, Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Association. During the Declarant Control Period, the Declarant shall have the exclusive right and authority to control, appoint, and/or remove Directors.

4.5. **Director Qualifications.** Except as otherwise provided herein, to serve on the Board of Directors, a Person must be an Owner current on the payment of Assessments, and, if a natural person, over the age of eighteen (18) years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Directors. No two Directors may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). Additional Director qualifications may be contained within the Bylaws, as well as the election, number and term limits of Directors. This Section 4.5 shall not be applicable during the Declarant Control Period.

4.6. **Limitation on Authority of Owners, Directors, Officers, and the Board of Directors.**

4.6.1. Except as provided in the Declaration, including the Design Guidelines, or the Bylaws, neither any individual Director nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to:

- 4.6.1.1. Amend or terminate any Governing Document;
- 4.6.1.2. Elect or remove Directors;
- 4.6.1.3. Establish or change the qualifications, powers and duties, requirements, or terms of Directors or of the Board of Directors; or
- 4.6.1.4. Authorize or agree to any deviation or exception from the Restrictions, except as provided by the Act or other applicable law.

4.7. **No Estoppel or Reliance Contrary to Governing Documents.** No one may rely upon any authorization contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the

Project to verify that anything that the Association, does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

5. ASSOCIATION GENERAL RIGHTS AND RESPONSIBILITIES

5.1. **Rights and Responsibilities of the Association.** The Association shall have the rights and responsibilities as set forth in this Section 5 and as reasonably necessary to carry out the terms of the Governing Documents in addition to any others set forth in the Governing Documents or provided by law.

5.2. **Maintenance.** The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area consistent with the planned unit development for the Project. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Areas and Facilities and the Project, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards. Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association.

5.2.1. **Underground Storm Water Detention Facility.** Lots 4 – 7 have an underground storm water detention facility and associated easement located at the rear of said lots. The Association shall be responsible for the maintenance of said underground storm water detention facility and the applicable Owner is responsible for any required landscaping maintenance above the underground storm water detention facility easement. Additionally, Owners of said Lots are prohibited from constructing any permanent structures (i.e., any structure with either a shallow or deep foundation) on the underground storm water detention facility easement.

5.3. **Paying Expenses.** The Association shall provide for the payment of Association expenses.

5.4. **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.

5.5. **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. All Rules adopted by the Association and/or Board of Directors shall be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

5.6. **Hiring Managers and Delegating Responsibilities.** The Association shall hire a Manager to assist the Board of Directors in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers delegated may be revoked by the Board of Directors at any time, with or without cause.

5.7. **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (i) impose fines; (ii) collect rents directly from tenants if Owners fail to pay Assessments; (iii) suspend voting rights; (iv) suspend rights to utilize the Common Area and Facilities; and (v) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. The Board of Directors shall uniformly and consistently enforce the Restrictions in the Governing Documents. Additionally, the Board of Directors shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act.

5.7.1. **Discretion.** The Association may not be required to take enforcement action if, after a fair review and acting in good faith and without conflict of interest, the Board of Directors determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interest to pursue and enforcement action, based upon reasonable criteria.

5.8. **Reserve Fund.** Subject to the exemptions found herein, the Association shall maintain a reserve fund and shall obtain and update a reserve analysis as required herein.

5.9. **Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board of Directors shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board of Directors may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least ten days' notice of the hearing to the affected Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.10. **Annual Meeting.** The Association shall arrange for and conduct an annual meeting of the Owners (except as otherwise allowed by law) as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.

5.11. **Payoff Information Fees.** The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board of Directors may increase or decrease the fee amount so long as it is consistent with the Act.

5.12. **Reinvestment Fee Covenant upon Sale or Transfer of Unit.** The Board of Directors may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. §57-1-46 in an amount to be determined by the Board of Directors and allowed by law. For purposes of this Section 5.14, a transfer is any change in the ownership of the Unit as reflected in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not but shall not include any transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant ("Transfer"). The amount shall be established by the Board of Directors consistent with Utah Code Ann. §57-1-46 or in the Notice of Reinvestment Fee Covenant. The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code Ann. §57-1-46. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include requirements for Owners to provide sales and transfer documents, and other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

6. BUDGET AND ASSESSMENTS

6.1. **Covenant to Pay Assessments.** The Owner of any Unit, excluding Declarant whose obligations regarding Assessments are set forth below, by accepting a deed for said Unit, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the Association all fees, annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

6.2. **Budget and Regular Assessment.** The Board of Directors is authorized and required to adopt of budget for the fiscal year prior to the beginning of each fiscal year. The Board of Directors shall use its reasonable discretion to revise the budget from time to time as appropriate. The budget shall cover the following fiscal year (or the current fiscal year if the budget is revised), which shall include detailed line items. The budget shall include a line item for the amount to be placed into the reserve fund. The Board of Directors shall divide the total budget amount for Common Expenses by the Allocated Interest for each Unit to determine the amount of the regular Assessments to be paid by each Owner. The Board of Directors shall present the adopted budget to the Owners at an annual or special Association meeting. In the

event no new budget is prepared and adopted by the Board of Directors, the last adopted budget shall continue until a new budget is adopted.

6.3. **Payment of Assessments.** Unless otherwise established and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment, annually or on such other quarterly or monthly installment as determined by the Board of Directors or the Manager. Assessments shall be allocated to Owners based on the Allocated Interest of each Unit unless otherwise communicated to the Owners.

6.4. **Adjustment to the Regular Assessment.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board of Directors, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.

6.5. **Personal Obligation for Assessment.** Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents, including any Benefitted Common Area Assessments and Service Area Assessments. Any and all Assessments, together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.

6.6. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

6.7. **Certificate of Payment.** Consistent with the Act, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board of Directors is authorized to charge a fee as provided in the Act for issuance of a certificate.

6.8. **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

6.9. **Special Assessments to a Particular Unit.** Special Assessments may be levied by the Association against a particular Unit and its Owner for:

6.9.1. Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;

6.9.2. Fines, late fees, collection charges, and interest; and

6.9.3. Attorneys' fees, costs and other expenses relating to any of the above.

6.10. **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project or Benefitted Common Area or in a Service Area, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board of Directors, in its discretion.

6.11. **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 of Directors, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board of Directors deems appropriate. The decision of the Board of Directors 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.

6.12. **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board of Directors is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

6.13. **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no

right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

6.14. **Declarant's Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Units owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.

7. EFFECT OF NONPAYMENT AND REMEDIES

7.1. **Late Fees and Interest.** Any Assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board of Directors. In addition, all fees and Assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors.

7.2. **Legal Remedies.** The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at Foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code §§57-8a-302 and -303, as the same may be amended. To this end, the Declarant (and each Owner by acceptance of a deed to a Unit) hereby conveys and warrants pursuant to Utah Code §§57-1-20 and 57-8a-302 to the Association's attorney, as trustee, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

7.3. **Association Responsibilities after Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay Assessments or maintain the Unit.

8. DESIGN REVIEW COMMITTEE

8.1. **Purpose.** In order to create, maintain, and improve the Project as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to establish procedures for the enforcement of the terms and conditions of this Declaration to protect and promote the value of the Project, the exterior design of all improvements constructed within the Project, landscaping, and changes or alterations to existing use, landscaping, and exterior design and development shall be subject to the prior review and approval of the Design Review Committee.

8.2. **Creation of Design Review Committee.** Except as provided for herein during the Declarant Control Period, the Design Review Board shall be composed of at least three (3), but not more than five (5), natural persons appointed by the Board of Directors. Persons serving on the Design Review Board shall serve at the pleasure of the Board of Directors. The Board of Directors may remove a member of the Design Review Board and appoint a new Design Review Board member at any time, provided that at all times there shall be a least three (3) persons serving. Members of the Design Review Board may or may not be Board of Directors or members of the Association and may include one or more paid professionals, such as an architect, to perform such services. The Design Review Board shall enforce the Design Guidelines and shall have and may exercise all the powers, duties and responsibilities set out in this Declaration. The Design Review Board may hire a secretary or other personnel to perform administrative, clerical, and other functions.

8.3. **Design Review Fee.** The operating costs of the Design Review Board, including the services of its planning consultants, professionals, and other staff, shall be covered through a fee paid to the Design Review Board by Owners applying for plan review and approval, consistent with §57-8a-109(2) of the Act. The Design Review Board shall make available to all Owners a current design review fee schedule, which may be modified from time to time in accordance with the Act. Fees must be paid in full before any review by the Design Review Board commences and the unused portion thereof, in any, is refundable.

8.4. **Scope of Authority.** Except as otherwise provided in this Declaration, no improvements of any kind or changes in the natural condition of any land within the Project shall be erected, altered or permitted to remain on any Unit or elsewhere in the Project unless complete architectural plans, specifications and a site plan showing the location and orientation for such construction, alteration or landscaping are approved by the Design Review Board prior to the commencement of any work. Work subject to Design Review Board approval may include, but is not limited to, the construction of structure, installation of utility line, fence, grading, planting, antennas, satellite dishes, flag poles, any renovation, expansion or refinishing of the exterior of an existing Unit or other structure, excavating, clearing, landscaping or other modification. Notwithstanding the foregoing, any work performed by or on behalf of Declarant to any of the property within the Project including, but not limited to, the construction of Subdivision Improvements and infrastructure, or the initial construction of the Units by the Declarant or plans of a bulk-builder that have been pre-approved by the Declarant, shall not require approval of the Design Review Board.

9. COVENANTS, CONDITIONS, AND RESTRICTIONS; DESIGN GUIDELINES

9.1. **Use of Lots.** All Lots within the Project shall be used only for the construction and occupancy of one single-family dwelling, not to exceed two stories in height, together with a private attached garage for not less than two (2) vehicles and for not more than four (4) vehicles. Off-street parking must be provided for an equivalent number of vehicles to the number of vehicles garaged and parking aprons as approved or required by the Committee. Lots may also be used for the construction of typical residential amenities such as a family swimming pool. All Lots shall be used, improved, and devoted exclusively for such single-family residential use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any such property and no persons shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval by the Committee and the appropriate officiate of the City of Fruit Heights.

9.2. **Architectural Control.** No grading, excavation, building, fence, wall, resident, or other structure, or alteration of any kind shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications thereof showing the location of all improvements has been approved in writing by the Committee. The Committee, in its sole option, may also require the Owner to submit a topographical plan and/or a detailed landscaping plan for review and approval. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of any Lot shall be subject to the prior written approval of the Committee. No changes or deviations in or from the plans and specifications once approved by the Committee shall be made without the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the City of Fruit Heights.

9.3. **Design Review Deadlines.** Upon receipt by the Committee of a written request for approval provided for or required by this Declaration, the Committee shall, within thirty (30) days after receipt of such request for approval, either: (i) approve the plans and specifications as submitted; or (ii) notify the party making such request of any objections thereto (Such objections to be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval rectifying any such objections to the Committee. The Committee shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Committee.

9.4. **Construction Quality, Size, and Height.** The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, heights, color, etc.

9.4.1. **Materials; Quality.** All structures constructed within the Project shall be of new materials and shall be of good quality workmanship and materials. Eighty percent (80%)

of all exterior construction shall be of new brick, stone, stucco, or cementitious siding such as, cementitious fiber board, lap siding, board and batten, or shake, except that used brick may be used with prior written approval of the Committee. Only those exterior materials which will blend harmoniously with the natural environment, with special emphasis on earth toned colors, shall be permitted. Log structures and vinyl siding are prohibited. Each structure shall have a brick or stone wainscot with a minimum height of three feet (3') except for doorways, windows, pop-outs, or bay windows with not foundation support around the entire structure. All roof materials and colors must be approved by the Committee, only 30 year architectural shingles or better shall be approved, no 3 tab shingles shall be allowed. The typical roof pitch shall be at least 6/12. The Committee may, but is not required to, grant a variance of the pitch only upon written request. A minimum width of six (6) inches shall be required on the fascia. The Committee may, but is not required to, grant a variance on the width of the fascia only upon written request. All stacks and chimneys from fireplaces in which combustible materials, other than natural gas, are burned shall be fitted with spark arresters. All Owners shall strictly comply with all state laws and city ordinances pertaining to fire hazard control.

9.4.2. Minimum Size and Length of Dwelling. No dwelling shall be permitted on any Lot wherein the stacking is more than two and one-half (2 ½) stories in height, and the ground floor area of the main structure, exclusive of garages and open porches, is less than the following area measurements:

9.4.2.1. For a single-story dwelling, one thousand two hundred fifty (1,250) square feet, not including basement area;

9.4.2.2. For a two-story dwelling, the aggregate footage of the upper two (2) floors (including the main floor level) of the structure totaling a minimum of one thousand seven hundred fifty (1,750) square feet with a minimum of nine hundred (900) square feet on the main floor level; and

9.4.2.3. For a multi-level dwelling, one thousand seven hundred fifty (1,750) total square feet, in the aggregate, for the upper main living levels (not including the basement areas) with a minimum of nine hundred (900) square feet on the main floor level.

9.5. Construction Time. The Committee shall have final control for approval of all color and material plans. The construction time for the exterior portion of any structure, shall not exceed twelve (12) months from start to finish, including landscaping. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks.

9.6. Slab on Grade. No Unit in the Project will be allowed to construct a residence using a "slab on grade", "floating", or other similarly termed, foundation.

9.7. **Building Location.** All setbacks, side yards, and rear yards shall be in conformance with Fruit Heights City Ordinance in effect at the time of construction of any building on any Lot.

9.8. **Landscaping.** Each Lot shall be landscaped with at least three (3) two-inch (2") caliper trees, as well as at least eight (8) shrubs, which shall be approved by the Committee prior to installation. Trees, lawns, shrubs, and other plantings provided by the Owner either before or after construction of a residence upon said Lot shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the Committee. No fence, wall, or screen shall be erected without prior written approval of the Committee. No fence, wall, hedge, or screen shall be erected that would obstruct sight lines or otherwise constitute a traffic hazard, particularly near driveways and street intersections. Only such natural foliage shall be removed from each Lot as is necessary for clearing the driveway, excavation for the foundation, and for lawns and patio areas. Topsoil is to be scraped and stockpiled before excavation for foundations or footings. The topsoil is to be replaced at the time of finish grading on each Lot. No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion or block or change the direction of drainage channels. Following the initial grading by the developer, the slope or contours of a Lot may not be altered in such a manner that blocks, alters, redirects, or otherwise modifies any drainage channels or drainage easements. All materials used to retain and contour the slope of any Lot or improvement must conform with the natural beauty and color of the Project and must be approved by the Committee. Each dwelling unit shall have installed surrounding it an outdoor sprinkler system for irrigation and other purposes.

9.8.1. **Mountain Road Park Strip; Entry Monument.** Pursuant to Sections 17.5.1 – 2, the Owners of Lots 1 and 15 shall be solely responsible to landscape and maintain the park strip adjacent to Mountain Road and the Owner of Lot 15 shall be responsible to landscape and maintain the area around the entry monument consistent with the provisions of this Declaration. The park strips shall include at least three (3) two-inch (2") caliper trees and the entry monument shall include flower beds at the base of said monument which extends a minimum of two (2) feet in each direction. The Committee shall approve the landscaping prior to installation.

9.9. **Deadline for Completion of Landscaping.** The front yard of each Lot (from the street to the front line of the residence on the Lot) shall be landscaped within ninety (90) days from receipt of certificate of occupancy of any structure built upon said Lot, provided, however that if an occupancy permit is issued during the months of October, November, December, January, February, March, or April, the front yard shall be landscaped by May 31. The remainder of the Lot shall be landscaped within six (6) months of the occupancy date of any structure built upon said Lot, provided, however that if the six (6) month deadline occurs during the months of October, November, December, January, February, March, or April, the rear yard shall be landscaped by March 31.

9.9.1. **Revegetation of Slopes.** Where any slope on any Lot has a slope of thirty percent (30%) or greater the Owner thereof shall be required to immediately revegetate said slope and present a revegetation plan to the Committee for review and approval.

9.10. **Fences.** Each Owner shall install and maintain the fencing on their respective Lot. Prior to installation, an Owner desiring to install a fence on their Lot shall submit said request in writing to the Committee to ensure conformity throughout the Project.

9.11. **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

9.12. **Outbuildings.** It is understood that outbuildings such as swimming pool dressing facilities may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration and are approved by the Committee. All pools must be fenced in strict compliance with local ordinances.

9.13. **Exterior Antennas, Lights and Power Lines.** Exterior antennas are prohibited. Exposed metal flues, vents, ventilator, or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding landscaping and related improvements. Television dishes will be allowed provided they are placed or screened so they are not visible to neighboring properties and streets. The location of television dishes must be approved by the Committee. Exterior lighting that is detached from a residence will not be allowed unless approved by the Committee. It is anticipated that variances for exterior lights, detached from a residence, that are positioned above a one-story level (i.e., basketball court lighting) will rarely be given. All power lines and similar type cables shall be buried underground.

9.14. **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection therewith shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be stored only in such areas as may be approved by the Committee. In addition, any construction equipment and building materials stored to kept on any Lot during construction of improvements may be kept only in areas approved by the Committee, which may also require screening of the storage areas.

9.15. **Parking or Storage of Vehicles.** No articles, material, equipment, or vehicles of any nature shall be parked or stored on any street located within the Project. Licensed, regularly used passenger vehicles may be parked in the streets of the Project for brief periods of time (i.e., less than twenty-four (24) hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited. No automobiles, trailers, boats, racks, snowmobiles, motorhomes, recreation vehicles, or any other type of vehicles shall be stored on driveways, unless behind the front line of the house. Such vehicles that are properly licensed and in running condition may be stored on side Lots if properly screened from view. The acceptability of the screening structure must be approved by the Committee.

9.16. **Garbage and Refuse Disposal.** No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials shall not be kept except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Project is prohibited. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

9.17. **Signs.** No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Committee; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven (7) square feet or smaller in size which states that the premises are for rent or sale. During construction of the residence, builder, or Owner of any Lot may display a sign up to sixteen (16) square feet, provided that the design and construction of said sign complies with the sign design and construction criteria issued by the Committee. The Committee may cause all unauthorized signs to be removed. This Section shall not apply to any signs used by Declarant or its agents in connection with the original development and construction of the Lots.

9.18. **SEWAGE INFRASTRUCTURE.**

9.18.1. **GRINDER PUMPS.** LOTS 4 – 12 MUST BE CONNECTED TO THE SANITARY SEWER SYSTEM BY WAY OF A LOW-PRESSURE SEWER LINE AND PROCESSOR, MANUFACTURED BY E/ONE MODEL NUMBERS DH151, DR151, OR EQUAL.

9.18.2. **EJECTOR PUMPS.** LOTS 1 - 3 AND 13 - 15 MAY REQUIRE THE USE OF INTERIOR SEWAGE EJECTOR PUMPS BASED ON EACH INDIVIDUAL HOME DESIGN. OWNERS OF ALL LOTS IDENTIFIED IN THIS SECTION 9.18.2 HEREBY AGREE TO SEEK THE ADVICE OF THEIR CONTRACTOR, SUBCONTRACTOR(S), ENGINEER(S), OR ARCHITECT(S) REGARDING THE MANUFACTURER AND MODEL NUMBER FOR THE INTERIOR SEWAGE EJECTOR PUMPS SUFFICIENT TO SERVICE SUCH OWNERS HOME DESIGN, IF NECESSARY. ALL COSTS, INCLUDING INSTALLATION AND MAINTENANCE, OF THE INTERIOR SEWAGE EJECTOR PUMPS

SHALL BE BORN BY THE OWNERS OF EACH LOT REQUIRING THE USE OF SUCH EQUIPMENT.

9.19. **Repair of Improvements.** No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required in this Section 9, such building or structure shall be immediately repaired, rebuilt, or shall be demolished.

9.20. **Restriction on Further Subdivision, Property Restrictions, and Rezoning.** Except by the Declarant during the Declarant Control Period, no Lot shall be further subdivided or separated into smaller Lots by any Owner, and portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Committee, which approval must be evidenced on the plat or other instrument creating the subdivision, easement, or other interest. Except by the Declarant during the Declarant Control Period, no further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Committee and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. Except by the Declarant during the Declarant Control Period, no application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Committee and the proposed use otherwise complies with this Declaration. Notwithstanding the foregoing, nothing herein shall limit the rights reserved by the Declarant.

9.21. **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.

10. RIGHT TO USE COMMON AREA AND FACILITIES

10.1. **Rights and Nonexclusive License to Use Common Area and Facilities.**

10.1.1. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities and the right and nonexclusive license for the use and enjoyment of the Benefitted Common Area to which that Owner's Unit has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities and assigned Benefitted Common Area, if any, as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board of Directors.

10.1.2. The Association shall have nonexclusive easements with the right of access over and across each Unit, to make inspections, to prevent or mitigate damage to Common Area and Facilities or Benefitted Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Association is responsible for maintaining, including any Benefitted Common Area or Service Area, which are accessible from such Unit. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities, Benefitted Common Area, and Service Area for purposes necessary for the proper operation of the Project.

10.1.3. The right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area and Facilities or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Association is reserved to the Declarant and the Association; provided, however, that the Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Association to the Owner of any such Unit.

10.2. **Limitation on Easement.** Notwithstanding anything to the contrary in foregoing Section 10.1, an Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

10.2.1. The right of the Association to impose reasonable limitations on the number of Occupants per Owner or guests who at any given time are permitted to use the Common Area and Facilities;

10.2.2. The right of the Association to suspend an Owner's right to the Common Area and Facilities: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; and

10.2.3. The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

10.3. **Utilities.** Easements and rights-of-way over, under and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures

and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

10.4. **Easements for Encroachments.** If any portion of the Common Area and Facilities or any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

10.5. **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

11. INSURANCE

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

11.1. **Insurance Held by Owner.** Each Owner shall obtain and maintain insurance covering the personal contents of the Unit or other improvements on such Owner's Lot. Each Owner shall also maintain a policy of homeowner's insurance on the residence on such Owner's Lot, protecting such residence against casualty and loss, in an amount not less than one hundred percent (100%) of the current replacement value of such residence.

11.2. **Insurance Held by Association.** The Association shall obtain and maintain all insurance policies required by the Act consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be funded by Assessments. Without limiting the foregoing, the Association shall obtain and maintain: (i) property and liability insurance for all Common Areas and Facilities; (ii) Fidelity Insurance (e.g., directors and officers coverage); (iii) Other insurance authorized and/or required by the Act; and (iv) such other insurance policies for casualty or liability as the Board of Directors deems necessary or desirable and with coverages and coverage limits comparable to similarly situated homeowner associations in Davis County.

11.3. **Deductible.** If permitted by the Act, the deductible on any claim made under a policy maintained by the Association shall be allocated among all Owners if the loss affects the Common Areas and Facilities or all the Lots in the Project or, if the loss affects or impacts less than all the Lots in the Project, the deductible shall be allocated among the Owners of the affected Lots.

12. DURATION AND AMENDMENT

12.1. **Duration.** This Declaration shall be effective, and the Declaration shall encumber the Property, from the date the Declaration is recorded in the office of the Davis County Recorder and, as amended from time to time, this Declaration shall continue in full force and effect against the Project and the Restrictions shall run with the land in perpetuity, for as long as the law allows unless amended or terminated.

12.2. **Amendment.** During the Declarant Control Period, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. Any other amendment proposed during the Declarant Control Period must be approved by sixty-seven percent (67%) of the Members of the Association and must also be approved by the Declarant in writing before it can be effective. After the Declarant Control Period, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the Members of the Association and such amendment must contain a statement from the Board of Directors certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the office of the Davis County Recorder.

12.3. **Termination.** An agreement to terminate this Declaration and the Restrictions set forth herein, shall require same approval required for an amendment as set forth in Section 12.2 above.

13. EMINENT DOMAIN

13.1. **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose

permitted by this Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Areas and Facilities are taken.

13.2. **Taking of Common Area.** If the Common Area and Facilities or Benefitted Common Area, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.

13.3. **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated, and the Board of Directors shall wind down the Association in accordance with applicable law.

13.4. **Priority and Power of Attorney.** Nothing contained in this Section 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area and Facilities, or any part thereof.

14. **INTERPRETATION, CONSTRUCTION, AND APPLICATION**

14.1. **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

14.2. **Interpretation of Declaration and Applicability of the Act.** The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

14.3. **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

14.4. **Severability.** Invalidation of any one or a portion of the Restrictions by judgment or court order shall in no way affect any other Restrictions, all of which shall remain in full force and effect.

14.5. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a planned unit development and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

14.6. **Applicable Law.** Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

14.7. **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

14.8. **Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Restriction is determined to be unenforceable in whole or in part for any reason.

14.9. **Notices.** The Association shall maintain a list of contact information for Owners of all Lots within the Project. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Restrictions, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

15. ATTORNEY FEES AND COSTS

15.1. Legal Costs Associated with Disputes with Owners.

15.1.1. **Owners Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Restriction after notice to the Owner that the Association intends to enforce the Restriction or after the Owner communicates or demonstrates an intent not to comply with the Restriction, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

15.1.2. **Costs.** The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration 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.

15.1.3. **Exception to Owner's Liability for Fees and Costs.** If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Restriction, or (iii) a request of an Owner for direction on the application of a Restriction, the Association incurs legal fees or costs related to the interpretation and application of a Restriction that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

16. RESERVES

16.1. **Requirement for Reserves.** Subject to the provisions of this Declaration, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

16.1.1. **Collection.** Reserve funds may be collected as part of regular or special Assessments.

16.1.2. **Amount.** In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. For purposes of this Section 16, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

16.1.3. **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

16.1.4. **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.

16.1.5. Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future. As further provided below, the Association is not required to obtain a reserve analysis during the Declarant Control Period.

16.1.6. Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

16.1.7. Summary and Copies of Reserve Analysis. The Association shall annually post and/or provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

16.2. Exceptions for Benefitted Common Area and Service Area Reserves. The requirements set forth in Subsections 16.1.1 - .7 shall not apply to reserves, if any, for a Benefitted Common Area or Service Area. A reserve analysis prepared for any Benefitted Common Area or Service Area shall comply with Subsection 17.1(g) and a copy provided to the Owners of those Units assigned to the Benefitted Common Area or Service Area, as the case maybe.

17. GENERAL PROVISIONS

17.1. Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any such Restrictions and the right to recover damages and other sums for such violation, including, but not limited to attorneys' fees and costs incurred in conjunction with such enforcement.

17.1.1. Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorneys' fees.

17.2. **No Liability of Officers.** To the fullest extent permitted by applicable law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

17.3. **Use of Funds Collected by the Association.** All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.

17.4. **Owner Liability and Indemnification.** Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

17.5. **Areas of Owner Responsibility.** Except to the extent that maintenance, repair, and upkeep of Unit exteriors and/or Lots has been assigned to the Association as part of a Service Area, each Owner shall be responsible for the maintenance, repair, and upkeep of the Owner's Unit, including snow and ice removal during winter months. Likewise, each Owner shall be responsible to maintain the landscaping and other improvements to the Owner's Lot, including grinder pumps, as applicable, except to the extent such maintenance has been assigned to the Association as part of a Service Area. Each Owner of a Lot shall be responsible for the maintenance and upkeep of any landscaped park strip area adjacent to the Owner's Lot, in compliance with City ordinances, unless the Association assumes the obligation for maintenance of the park strip.

17.5.1. **Park Strips Adjacent to Mountain Road.** The Owners of Lots 1 and 15 will be solely responsible for the cost of maintaining the park strip areas adjacent to Mountain Road, even if said areas are designated as "Common Areas".

17.5.2. **Entry Monument.** The Entry Monument for the Project is located on Lot 15. The Lot 15 Owner shall be responsible to maintain the landscaping around the Entry Monument in accordance with the provisions herein and the Association will be responsible for maintaining the Entry Monument.

17.5.3. Except to the extent provided by the Declarant pursuant to a written agreement, each Owner shall be responsible for initial landscaping for the Unit, including, sod, trees, shrubs, and flowers in accordance with the Design Guidelines and applicable City ordinance. Initial landscaping shall be completed in a timeframe required by City ordinance.

17.5.4. A landscaping bond may be required by the City in addition to any performance bonds or deposits required by the Design Review Board.

17.6. **Variances.** The Board of Directors, at its option and in extenuating circumstances, may grant variances from the Restrictions set forth in Declaration if the Board of Directors determines, in its discretion: (a) 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 (b) that the activity permitted under the variance will not have any negative financial affect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Community-Wide Standards. 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 of Directors. No variance may be granted that is inconsistent with the City ordinance, or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

17.7. **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to affect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

17.8. **Security.** Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Board of Directors are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

17.9. **Reasonable 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 Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, 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 anyone else.

17.10. **No Representations and Warranties and Disclaimers.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT 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 PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARM LAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

18. **DECLARANT RIGHTS AND CONTROL**

18.1. **Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the all rights and powers provided for in this Section 18. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the article shall all nonetheless be subject to the terms in this Section 18.

18.2. **Right to Appoint the Board of Directors During Declarant Control Period.** The Declarant shall have the right to appoint and remove all Directors during the Declarant Control Period. In the appointment of Directors, the Declarant shall not be bound by any qualifications for Directors in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Board of Directors without appointing Directors pursuant to the rights granted in the Articles to the Declarant.

18.3. **Declarant Retains All Rights and Authority During Declarant Control Period.** During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers and authority of the Design Review Board without the Board of Directors appointment of Design Review Board members. During the Declarant Control Period, the Declarant may pre-approve plans and/or waive design review fees for a bulk-lot builder. The Declarant shall determine whether to hire professional management during the Declarant Control Period.

18.4. **Easement Rights.** The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

18.5. **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

18.6. **Assessment Exemption.** The Declarant shall be exempt from any Assessments including any regular Assessment, Benefitted Common Area Assessment, Service Area Assessments or special Assessment.

18.7. **Right to Amend Governing Documents.** Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, any Supplement to the Declaration establishing a Benefitted Common Area or Service Area or Additional Covenants, the Bylaws, the Articles, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to §57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons

having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

18.8. Right to Designate Benefitted Common Area and Service Area and Modify Prior Designations. Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to designate Benefitted Common Area and Service Area and to designate the particular Units assigned to such Benefitted Common Area or Service Area, as the case may be. During the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to modify any previously designated Common Area or Service Area and to adjust or modify the assignments of Units respectively thereto.

18.9. Assignment of Special Declarant Rights. The Declarant, at any time, may assign, transfer, or share all or some of its control, power, rights, exemptions, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the Project or to be expanded into the Project.

18.10. Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.

18.11. No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Section 18, may not be substantively or procedurally altered during the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void ab initio.

18.12. Use of Units and Common Areas and Facilities for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities and any part of any Benefitted Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

18.13. **Facilities Open to the Public.** The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks and other neighborhood areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Association or the Board of Directors may so designate at any time thereafter.

18.14. **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Section 18 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner, by taking title to a Unit, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

18.15. **Declarant Exemption from Statutory Obligations.** Pursuant to §57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of §57-8a-217 of the Act. Pursuant to §57-8a-211(10) of the Act and elsewhere herein, §57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

18.16. **Authority to Grant Exemptions.** In its sole discretion, Declarant may grant exemptions from any provisions of this Declaration or other Governing Documents to a Person engaged in the construction, development, marketing, or selling of Lots or Units within the Property. This includes, without any limitation, exemption from Assessments, reinvestment fees, Design Guidelines, and so forth.

19. CONFLICT AND LITIGATION AVOIDANCE

19.1. **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing

approval of the Owners. The intent of this Section 19 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, the Benefitted Common Area and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

19.2. 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.

19.2.1. 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:

19.2.1.1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

19.2.1.2. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);

19.2.1.3. The proposed remedy;

19.2.1.4. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and

19.2.1.5. That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

19.2.2. 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.

19.2.3. 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 of the original Notice, except as may be limited by Section 19.3 below.

19.2.4. 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 19.3 below, the Association shall:

19.2.4.1. 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;

19.2.4.2. 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

19.2.4.3. 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.

19.2.5. 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.

19.2.6. 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 Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

19.2.7. 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, §57-8a-228.

19.2.8. 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.

19.3. **MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT.** In addition to the requirements and procedures set forth in Section 19.2 above, the Association and each Owner is deemed to have accepted and agreed to comply with the terms of this Section.

19.3.1. 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 Units, the sale of a 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, shall 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 19.2 and 19.3.

19.3.2. 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.

19.3.3. The following are general arbitration provisions:

19.3.3.1. 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.

19.3.3.2. 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.

19.3.3.3. This Section 19.3 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.

19.3.3.4. 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.

19.3.3.5. 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.

19.3.3.6. The participation by any party in any judicial proceeding concerning this Section 19.3 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 19.3. Attorneys' fees and costs shall be borne pursuant to (iv) above.

19.3.3.7. 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.

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

19.3.3.9. If any provision of this Section 19.3 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.

19.3.3.10. All parties governed by this Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 19.3 decided in a court or by a jury trial.


19.4. **Landowners.** All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Section 19.

[CERTIFICATION AND SIGNATURE PAGE FOLLOWS]

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

DATED as of the ____ day of _____, 2020.

CW THE HEIGHTS, LLC,
a Utah limited liability company

By: 
Its: _____

STATE OF UTAH)
 §
COUNTY OF DAVIS)

On the 31 day of March, 2020, personally appeared before me Colin H Wright who by me being duly sworn, did say that she/he is an authorized representative of CW The Heights, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.


(Notary Signature)

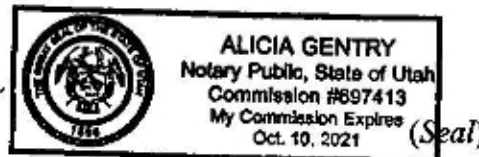


EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 1, Township 3 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Fruit Heights City, Davis County, Utah:

Beginning at the Southwest corner of Lot 13, Pilly Green, a subdivision in Fruit Heights City Utah, being on the Easterly Right-of-Way Line of U.S. Highway 89, said point is 932.34 feet North 89°47'25" East along the Quarter Section Line and 508.98 feet South 0°12'35" East from the West Quarter Corner of said Section 1; and running thence North 48°20'00" East 146.99 feet; thence South 54°17'00" East 586.39 feet to the Northerly Right-of-Way Line of Mountain Road; thence South 35°43'16" West 303.86 feet along said Northerly Right-of-Way Line; thence North 54°17'00" West 518.31 feet to the Easterly Right-of-Way Line of said U.S. Highway 89 and a point of a non-tangent curve; thence Northeasterly along the arc of a 7724.50 foot Radius curve to the left a distance of 189.13 feet (Central Angle equals 1°24'10" and Long Chord bears North 3°44'14" East 189.12 feet) along said Easterly Right-of-Way Line to the Point of Beginning.

Contains 177,522 Sq. Ft. or 4.075 Acres

EXHIBIT "B"
BYLAWS OF
THE HEIGHTS OWNERS ASSOCIATION, INC.
(Fruit Heights City, Davis County, Utah)

THESE BYLAWS OF THE HEIGHTS OWNERS ASSOCIATION, INC., are effective upon recording in the office of the Davis County Recorder pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred to collectively herein as the "Acts").

RECITALS

A. The Association is organized for any and 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 in order 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, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

Capitalized terms used herein shall have the same meaning and effect given to such terms in the Declaration except as otherwise provided herein or as may be required by context.

ARTICLE II
APPLICATION

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

ARTICLE III
MEMBERSHIP IN ASSOCIATION; VOTING; MEETING OF OWNERS

3.1 Membership in Association. Declarant, so long as Declarant owns a Lot, and every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to ownership of any Lot. Each Lot in the Project shall be entitled to one (1) vote. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If a Lot is owned by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. Ownership of a Lot within the Project cannot be separated from the Association

membership appurtenant thereto, and any devise, conveyance or other disposition of a Lot shall constitute a devise, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

3.2 Voting. Unless otherwise provided for herein, or required by the Declaration, all matters submitted to a vote shall be by a majority vote of all votes cast. Notwithstanding the foregoing, during the Declarant Control Period, Declarant may act in all Association matters with or without a vote of the Owners. To the extent any matters are submitted to a vote of the Owners during the Declarant Control Period, the same shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Association shall be decided by the votes of the Owners. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one (1) Owner the vote for the Lot shall be cast as such Owners decide among themselves. In the event such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

3.3 Annual Meeting. During the Declarant Control Period, annual meetings are not required and will only be held in the sole discretion of the Declarant. Thereafter, the annual meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated for the annual meeting of the Owners, 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 of the Owners. The Board may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.4 Special Meetings. During the Declarant Control Period, the Declarant shall have the sole right to call a special meeting. Thereafter, special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty-three percent (33%) of all of the total votes of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the Board 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 Board shall then call, provide notice of, and conduct a special meeting within forty-five (45) days of receipt of the request.

3.5 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary / Treasurer or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, or by email, text message or other mode of electronic or digital communication, to the extent not prohibited by law, at least fifteen (15) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address, email address, number for text messaging, or other mode of electronic or digital communication last appearing on the

books of the Association, or supplied by such Owner to the Association for the purpose of notice. Each Owner shall register with the Association such Owner's current email address, phone number (indicating whether the same is capable of receiving text messages, and mailing address for the purposes of notice hereunder. Such registered email, phone number, and mailing addresses 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 Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. Such notice shall specify the place, day and hour of the meeting, and, the purpose of the meeting. The President of the Association will chair meetings of the Owners. The presence of an Owner at a meeting shall be deemed to waive any objection such Owner has to the form and scope of the notice unless such Owner objects at the outset of the meeting.

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 fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice for 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 or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 Place of Meetings. The Board may designate any place in Davis 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.

3.8 Quorum. Except for meetings addressing an amendment of these Bylaws, an amendment of the Declaration, or other matters for which the affirmative votes of a certain percentage of Owners is required for approval, the Owners present in person or by proxy at a meeting of the Association shall constitute a quorum. Where a certain percentage of affirmative votes of Owners is required to approve an action and such action is to be discussed at the meeting, a quorum shall consist of not less than the number of affirmative votes required to approve such action.

3.9 Proxies. At all meetings of the Association, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the applicable Owner(s) of the Unit(s), and filed with the Secretary / Treasurer or any professional manager the Association chooses to retain. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner(s) of his or her Lot(s).

3.10 Waiver. 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 if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver of any notice requirements.

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 U.C.A §16-6a-707 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 Owners.

ARTICLE IV
BOARD; SELECTION; TERM OF OFFICE

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

4.2 Number, Selection and Tenure. The Association will be composed of three (3) Directors. Initially, the Board will have three (3) Directors who will be selected by the Declarant. The Declarant shall decide who serves on the Board during the Declarant Control Period and may increase the number of Directors. After the Declarant Control Period, the Board will consist of three (3) Directors. Within ninety (90) days after the end of the Declarant Control Period, the Association shall hold an election at which the Owners shall be entitled to elect all three (3) Directors. Upon such election, the terms of the Directors will be staggered as follows: the two (2) Directors receiving the highest number of votes in such election shall serve for an initial term of three (3) years, and the one (1) Director receiving the next highest number of votes shall serve for an initial term of two (2) years. After the expiration of the initial terms, all Directors shall serve terms of two (2) years. After the Declarant Control Period, the Board may change the number of Directors on the Board by the vote of a majority of Directors. In addition, after the Declarant Control Period the Owners may change the number of Directors by the vote of a majority of Owners. Notwithstanding the foregoing, there shall always be an odd number of Director slots and the terms of the Directors shall be staggered. Notwithstanding the foregoing, Declarant may, at Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Declarant Control Period. Such action shall not be deemed as a termination of the Declarant Control Period or a waiver of any of the rights of Declarant as provided herein.

4.3 Removal and Replacement. After the Declarant Control Period, a Director may be removed with or without cause by a majority vote of the other Directors or by a majority vote of the Owners at a meeting of the Owners called for the purpose of voting on removal. If a Director is removed, the remaining Directors (provided there are at least two (2) Directors serving) shall determine a replacement Director to fill the remainder of the term of the removed Director. If the Board cannot determine a replacement, or if there are not two (2) directors then serving, the Owners shall fill vacancies on the Board at a meeting called for the purpose of filling vacancies.

4.4 Indemnification. In the event that any legal claim or action is asserted or commenced against a Director or Officer for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless it a court of competent jurisdiction determines that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such determination, the Association is no longer liable for the cost of defense and may recover costs already expended from the Director or Officer who so acted.

ARTICLE V
MEETINGS OF THE BOARD OF DIRECTORS

5.1 Regular Meetings. Meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a weekend or legal holiday, then that meeting shall be held at

the same time on the next day which is not a weekend or legal holiday.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than five (5) days written notice to each Director.

5.3 Open Meetings. After the Declarant Control Period, meetings of the Board shall be open to the Owners or Owners' agents except in cases where the Utah Revised Nonprofit Act permits private meetings. After the Declarant Control Period, any Owner may request notice of all meetings of the Board, in which case the Board shall provide notice of all meetings to such Owner not less than forty-eight (48) hours prior to such meeting.

5.4 Quorum and Voting. A majority of the number of Directors shall constitute a quorum for the transaction of business. During the Declarant Control Period, all matters requiring a vote of the Directors or otherwise submitted to a vote of the Directors shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Directors shall be decided by the votes of the Directors. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board and of the Association.

ARTICLE VI POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACTS

6.1 Powers. The Board shall have power to:

6.1.1 Adopt and publish Rules and Regulations governing the use of the common areas within the Neighborhood or as shown on the Plat Map or identified in the Declaration ("**Common Areas**"), and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

6.1.2 Adopt and publish other Rules and Regulations for the management of the Association as are not in conflict with the Acts, the Declaration, or these Bylaws.

6.1.3 As the Board deems necessary, employ a professional manager, or other independent contractors or employees, to carry out the functions of the Association and exercise the powers of the Board which are properly the subject of delegation; and

6.1.4 Exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Acts, the Declaration, or the Articles of Incorporation.

6.2 Duties. It shall be the duty of the Board to:

6.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote thirty-three percent (33%) of the total votes;

6.2.2 Supervise any professional manager and all Officers, agents and employees of this Association, and to see that their duties are properly performed;

6.2.3 After the Declarant Control Period, do each of the following in the manner set forth in the Declaration:

6.2.3.1 Prepare the budget for the Association as provided in the Declaration and Section 10.1 of these Bylaws;

6.2.3.2 Fix the amount of the annual assessment assessed against each Lot and fix the amount of any supplemental assessments or special assessments applicable to any Lots;

6.2.4 Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each supplemental assessment or special assessment; and

6.2.5 Foreclose the lien (at the option of the Board) against any Lot for which assessments are not paid in the manner provided for in the Association Act and the Declaration or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same;

6.2.6 Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid and to charge a reasonable fee for the issuance of these certificates;

6.2.7 Procure and maintain insurance as required by the Declaration and the provisions of the Association Act relating to insurance;

6.2.8 Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions of the Association Act relating to reserve funds;

6.2.9 Cause all Officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate; and

6.2.10 Cause the Common Areas to be properly maintained and managed.

6.3 Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against Declarant, the individual managers, owners, members, or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units or Units thereon unless and until all of the "MANDATORY DISPUTE RESOLUTION REQUIREMENTS" set forth in the Declaration have been satisfied.

6.4 Applicability of the Community Association Act. The provisions of the Community Association Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

6.5 Applicability of the Utah Revised Nonprofit Act. The provisions of the Utah Revised Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise

provided in these Bylaws, the Declaration, or the Articles of Incorporation.

ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The following positions shall constitute the officers of this Association ("**Officers**"): a President, a Vice-President, a Secretary / Treasurer, and such other Officers as the Board may from time to time by resolution create.

7.2 Selection of Officers. The Declarant shall select the three (3) initial Officers, and the Declarant shall decide who serves as Officers during the Declarant Control Period. After the Declarant Control Period, the Board shall annually, at the next meeting of the Board after the Association's annual meeting, select the Officers. After the Declarant Control Period, all Officers shall be members of the Board.

7.3 Term. After the Declarant Control Period, the Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

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

7.5 Resignation and Removal. After the Declarant Control Period, any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary / Treasurer. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.6 Vacancies. After the Declarant Control Period, a vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

7.7 Multiple Offices. Members of the Board may be Officers in the Association. No person shall simultaneously hold more than one (1) of any of the offices identified above, except in the case of special Officers created pursuant to Section 7.4, above.

7.8 Duties of Officers. The duties of the Officers are as follows:

7.8.1 President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all written contracts or agreements of the Association. The President shall execute any amendments to the Declaration and deliver the same to the Secretary / Treasurer for certification and recordation, provided approval for such amendment has been obtained as provided in the Declaration.

7.8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

7.8.3 Secretary/Treasurer. The Secretary / Treasurer shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; certify that any amendments to the Declaration have received the required approval and have been executed by the President and shall record the same; and shall perform such other duties as required by the Board. The Secretary / Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep the Associations book and accounts; and shall assist the Board with the preparation of the annual budget to be presented to the Owners as provided herein.

ARTICLE VIII COMMITTEES

8.1 Committees Authorized. The Board may appoint Committees as it deems appropriate for carrying out the purposes of the Association.

ARTICLE IX BOOKS AND RECORDS

9.1 Open Records. Notwithstanding Section 6.2.1, above, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation, the Bylaws, and any Rules promulgated by the Board shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE X BUDGET AND ASSESSMENTS

10.1 Budget. The Board shall prepare an annual budget showing the estimated expenses of the Association and the anticipated annual assessment for the following year attributable to each Lot. The budget shall be completed and distributed to the Owners on or before December 1 of each year.

10.2 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

10.3 Payment of Assessments. As more fully set forth in the Declaration, and subject to the exemptions set forth in the Declaration, each Owner is obligated to pay to the Association all assessments, and the Owner's obligation to pay such assessments is secured by a continuing lien upon the Owner's Lot. Any assessment which is not paid when due is delinquent. If the assessment is not paid on time, then the Board has the authority to establish late fees and collect the same from the delinquent Owner. The Board, in the name of the Association, may bring an action at law against the Owner personally obligated to pay the assessments and late fees or foreclose the lien against the Lot in the manner provided by the Association Act, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Areas or abandonment of his or her Lot.

10.4 Set-up Fee. In addition to the assessments identified in the Declaration, the Association may charge an administrative set-up fee whenever a new Owner takes title to a Lot. The amount of any set-up fee will be determined by the Board in accordance with these Bylaws and may be adjusted by the Board from time to time. The set-up fee will be used to offset the administrative, data entry, and recordkeeping costs associated with the change of ownership from one Owner to another.

ARTICLE XI AMENDMENTS

11.1 Amendment. During the Declarant Control Period, the Declarant shall have the right to amend these Bylaws without the consent of any other Owner. Any other amendment proposed during the Declarant Control Period must be approved by sixty-seven (67%) of the members of the Association and must also be approved by the Declarant in writing before it can be effective. After the Declarant Control Period, these Bylaws may be amended, at a regular or special meeting of the Association, by a vote, in person or by proxy, of the Owners entitled to cast at least sixty-seven percent (67%) of the total votes of the Association; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction.

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

ARTICLE XII MISCELLANEOUS

12.1 Governing Law. These Bylaws shall be governed by, and interpreted in accordance with, the laws of the State of Utah.

12.2 Severability. If any section, term, or provision of these Bylaws is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Declaration which shall all remain in full force and effect.

12.3 No Waiver. The failure by the Declarant or the Association to enforce any term or provision of these Bylaws shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

[SIGNATURE PAGE FOLLOWS]

