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Ivory Development, LLC  
978 Woodoak Ln.  
Salt Lake City, UT 84117

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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS

FOR

08-652-0001 → 0043

# FLATROCK RANCH

IN

FARMINGTON, UTAH

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 20, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 21.**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS  
FOR

**FLATROCK RANCH**

RECITALS

- A. Ivory Development, LLC ("Ivory") is the owner and developer of certain real property located in Farmington City, Utah more particularly described on Exhibit A hereto (the "Property"). The Property has been or will be developed as a planned development.
- B. The development of the Property and construction of all improvements thereon has been or shall be performed in accordance with Farmington City Ordinance and the Plat has or will be recorded with the Office of Recorder for Davis County, Utah .
- C. Ivory Development, as developer and Declarant, hereby establishes and adopt this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Flatrock Ranch, effective as of the date this instrument is recorded with the Office of Recorder for Davis County, Utah, to establish a governance structure and standards and procedures for the development, expansion, administration, maintenance, and preservation of FLATROCK RANCH as a planned community.
- D. The Project is a residential planned community which includes single family lots and a private roadway. An integral part of the development of the Project is the formation of a community association, as a Utah nonprofit corporation, to own, operate and maintain the common areas, common elements, and community improvements, and to administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act. The Terms and Conditions herein are established for the mutual benefit and burden of the Association, present and future Owners, Occupants, Lenders and others acquiring any interest in the Project.
- E. This Declaration is intended 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.

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

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, the Declarant hereby adopts this Declaration.

## ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 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 twenty (120) square feet or larger.
- 1.2 "Act" shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code Annotated ("Utah Code Ann.").
- 1.3 "Additional Covenants" shall mean and refer to any additional restrictions, conditions or covenants imposed on a Unit or Owner. If the Additional Covenants are more restrictive than the provisions of this Declaration, the more restrictive provision shall control. The Association shall have standing and authority to enforce any such Additional Covenants.
- 1.4 "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 in Sections 6.2(d) and 20.6 herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.
- 1.5 "Articles" shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.6 "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 all Common Area Assessments and Service Area Assessments.
- 1.7 "Association" shall mean and refer to the Flatrock Ranch Homeowners Association, the membership of which shall include and be comprised of each Owner in the Project. 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.
- 1.8 "Bylaws" shall mean and refer to the Bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.9 "City" shall mean and refer to Farmington City, a political subdivision of the State of Utah, located in Davis County, Utah.
- 1.10 "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 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(s); (c) 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; (d) any fence or wall on common property; (e) any roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City; (f) 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.

- 1.11 "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.
- 1.12 "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 and standards described in this Declaration, Design Guidelines, or Rules. The Community-Wide Standards may or may not be set forth in writing.
- 1.13 "Declarant" shall mean and refer to Ivory Development, LLC and its respective affiliates, successors, and assigns.
- 1.14 "Declarant Control Period" shall mean and refer to the period of time during which the Declarant owns any land within the Project.
- 1.15 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Flatrock Ranch, including all attached exhibits other than any Bylaws, and all valid supplements and/or amendments to this Declaration.
- 1.16 "Design Guidelines" shall mean and refer to the Flatrock Ranch Design Guide, if established for the Project, and any valid amendments thereto.
- 1.17 "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.
- 1.18 "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.
- 1.19 "Governing Documents" shall mean and refer to this Declaration, the Plat, the Bylaws,

the Rules, any Articles, the Design Guidelines and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.

- 1.20 "Lender" shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.21 "Lot" shall mean and refer to an individual lot created on the Plat on which a 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."
- 1.22 "Manager" shall mean and refer to the Person or Persons engaged by the Management Committee to manage the Project.
- 1.23 "Management Committee" shall mean and refer to the body with primary authority to manage the affairs of the Association and also commonly referred to as a Board of Directors or the Board.
- 1.24 "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, and invitees of an Owner or an Occupant.
- 1.25 "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 Office of Recorder for Davis County, Utah. 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."
- 1.26 "Pasture Area" shall mean and refer to Parcel B and Parcel D. Pasture areas are owned and maintained by the Association. Pasture areas may be leased by the Association for agricultural purposes.
- 1.27 "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."
- 1.28 "Plat" shall mean and refer to the record of survey map or maps for Flatrock Ranch and any portions thereof, recorded with the Office of Recorder for Davis County, Utah, and all recorded amendments and supplements thereto.
- 1.29 "Project" shall mean and refer to the Flatrock Ranch 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 Supplement to Declaration and plat map for the additional land is recorded.
- 1.30 "Property" as previously defined herein, shall include all easements and rights appurtenant thereto.
- 1.31 "Recreational Amenities" shall mean and refer to any and all of the recreation improvements, if any, constructed in the Project which may include designated open

space and trails, 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 § 57-8a-218 of the Act.

- 1.32 "Rules" shall mean and refer to the rules and regulations adopted by the Association.
- 1.33 "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.
- 1.34 "Service Area Assessments" shall mean and refer to assessments levied against the Units in a particular Service Area to pay for Service Area Expenses.
- 1.35 "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.
- 1.36 "Subdivision" shall mean and refer to the Flatrock Ranch development, including all Units, Common Areas and Facilities, and other property within the Project as shown on the Plat covering the entire Property.
- 1.37 "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 Farmington City ordinance.
- 1.38 "Supplement to 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 Supplement to Declaration shall also mean and refer to any recorded instrument designating Common Area and assigning Units thereto. A Supplement to Declaration may also include Additional Covenants applicable only to the annexed land or Common Area or Service Area.
- 1.39 "Terms and Conditions" shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.40 "Unit" shall mean and refer to a subdivided Unit within the Subdivision depicted as a separately identified parcel on the Plat, a survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a residential unit. A Unit intended and zoned for residential use is sometimes referred to herein 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 within a condominium, 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, survey, or condominium instrument is recorded subdividing it into

more than one Unit. The term "Unit" does not include Common Area and Facilities, common property or property dedicated to the City or the public.

## ARTICLE 2 THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Declarant hereby declares and the Association hereby confirm that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, 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 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 Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project is a residential development, which may be developed and constructed in phases. The Project, when completed, may include up to 40 Residential Units, public road, pasture area and other areas of common responsibility. The Project is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named "Flatrock Ranch." 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.
- 2.4 **Modifying or Changing the Name of the Project.** 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.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.6 **Expansion of Project.** Subject to the Farmington City ordinance, the Project may be expanded or contracted by the Declarant. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and subject to this Declaration by recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.

## ARTICLE 3 DESCRIPTION OF THE UNITS, LIMITED COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS

- 3.1 **The Unit.**
  - (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
  - (b) 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, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane

of the ground-level boundary of the Unit is part of the Unit if it: (i) is part of and an integral part of the Unit structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Unit structure), or (ii) was constructed as part of the original construction of the Unit.

- (c) 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.

(d) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be the first installation of foundations, framing, wallboard, and the like. If the Management Committee, in its sole discretion, determines that the then-current construction varies from the original as-built construction, then the Association, at the expense of the Association or the Owner, in the Management Committee's discretion, may require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Management Committee shall consider: (i) whether the Owner caused the nonconforming construction; (ii) whether the Owner sought or obtained Management Committee approval for any nonconforming construction regardless of whether any such approval was valid or not; (iii) whether other Owners engaged in similar nonconforming construction; (iv) the overall culpability of the Owner as it relates to the nonconforming construction; and (v) the reason for the nonconforming construction.

### 3.2 Limited Common Area.

- (a) **Specific Identification of Limited Common Areas.** The Limited Common Area of a Unit, if any, shall consist of areas identified on the Plat or this Declaration as amended as limited common area or limited common ownership that is spatially associated with that Unit.
- (b) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Unit where so identified and may not be severed from the ownership of the Unit.

3.3 **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 in Article 21 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.

3.4 **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 of controlling law.



**ARTICLE 4**  
**ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 4.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 4.2 **Legal Organization.** The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Declaration and Bylaws.
- 4.3 **Membership.** Membership in the Association at all times shall 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 titled 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.
- 4.4 **Availability of Documents.**
- (a) 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 §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.
    - (i) The term "available" as used in Section 4.5(a) above shall mean available for inspection or copying at the Association's principle place of business or the offices of the Manager not later than five (5) business days after receipt of a proper written request, during normal business hours and under other reasonable conditions, except that annual financial statements requested by an Owner may be provided to an Owner within fifteen (15) days of receipt of such request.
    - (ii) Notwithstanding anything to the contrary in this Section 4.5, the Association may require that the Owner strictly comply with any and all statutory provisions or other legal requirements applicable to providing this information before providing it.
    - (iii) If an Owner elects to have the Association produce copies of requested documents or records, the Association may assess the Owner reasonable copying costs consistent with § 57-8a-227(4)(b)(ii) of the Act.
  - (b) 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 within thirty (30) days of receipt of a written request.

- (c) Notwithstanding anything to the contrary in this Section 4.5, 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.

**4.5 Management Committee.** The governing body of the Association shall be the Management Committee selected pursuant to the Bylaws, subject to Article 21 herein. The Management Committee shall consist of at least three (3) members, provided that the Management Committee shall be comprised of an odd number of members. Except as otherwise provided in this Declaration, Bylaws, or the Articles of incorporation, the Management Committee, in all instances, 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 Management Committee. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

**4.6 Management Committee Members.**

- (a) **Qualification.**
  - (i) Except as provided in Section 20.2 herein, to serve on the Management Committee, a Person must be an Owner current on payment of Assessments, and, if a natural individual, over the age of eighteen 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 Management Committee.
  - (ii) As further detailed and explained in the Bylaws, and except during the Declarant Control Period as set forth in Section 20.2 herein, at least one (1) of the Management Committee members, must have as their primary residence a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Management Committee members.
- (b) **Reasonable Ongoing Requirements for Management Committee Members.** The Bylaws may place reasonable obligations and requirements on existing Management Committee members to retain their membership on the Management Committee, such as a requirement that a Management Committee member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee members. Any Bylaw requirements adopted pursuant to this section shall not be applicable retroactively and shall not apply to any

Management Committee members serving on the Management Committee at the time such requirements are adopted.

- 4.7 Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee.
- (a) Except as provided herein, in the Bylaws, or in the Design Guidelines, neither any individual Management Committee member nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to:
- (i) amend or terminate any Governing Document;
  - (ii) elect or remove members of the Management Committee;
  - (iii) establish or change the qualifications, powers and duties, requirements, or terms of Management Committee members or of the Management Committee; or
  - (iv) authorize or agree to any deviation or exception from the Terms and Conditions.
- 4.8 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee or anyone else) 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.
- 4.9 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

## ARTICLE 5

### GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities set forth in this Article 5 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 and Facilities. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, the Common Area 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.
- 5.3 Capital Improvements. After the Declarant Control Period, capital improvements shall be

governed by and subject to the following conditions, limitations, and restrictions:

- (a) Subject to any applicable federal or state law or municipal ordinance, any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Management Committee alone. A material alteration to the Project, for example, is the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as the Entry Monument. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
  - (b) Subject to any applicable federal or state law or municipal ordinance, any capital improvement to the Project that does not materially alter the nature of the Project, regardless of its cost, and prior to being constructed or accomplished, must be authorized by written consent of Owners holding at least thirty percent (30%) of the total Allocated Interests and must be approved of by the Management Committee and the Design Review Board.
- 5.4 Paying Expenses. The Association shall provide for the payment of Association expenses.
- 5.5 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.
- 5.6 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 address any issues including those addressed in any other Governing Documents and may include restrictions and regulations specific to any Service Area. 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. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 5.7 Hiring Managers and Delegating Responsibilities. The Association shall hire a Manager to assist the Management Committee 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 Management Committee 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 and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- 5.8 Other Necessary Rights. The Association shall have any other right that is

reasonably necessary to carry out the terms of the Governing Documents.

**5.9 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: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights; (d) suspend rights to utilize the Recreational Amenities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

**5.10 Discretion in Enforcement.**

- (a) Subject to the discretion afforded in this section, the Management Committee uniformly and consistently shall enforce and implement the Terms and Conditions in the Governing Documents.
- (b) The Management Committee shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to (i) impose sanctions, (ii) pursue legal action for a violation of the Governing Documents, (iii) compromise a claim made by or against the Management Committee or the Association; and (iv) pursue a claim for an unpaid Assessment.
- (c) Consistent with Subsection (b) of this Section 5.10, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Management Committee 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 interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (d) Subject to Subsection (e) of this Section 5.10, if the Management Committee decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
- (e) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

**5.11 Reserve Fund.** Subject to the exemptions in Section 20.17 herein, the Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 18 of this Declaration.

**5.12 Preventing Conflicts with Service Providers and Vendors.** Subject to the exemptions in Section 20.15 herein, the Association shall not allow any paid services or materials reasonably valued at more than \$2,500 to be performed or provided for the Association by: (a) any Management Committee member; (b) any relative of any Management Committee member, Manager, or of any officer, employee, or owner of the Manager; or (c) any business or entity in which any Management Committee member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 10% ownership or beneficial interest without prior written disclosure of the relationship

to the Management Committee and a written agreement executed by the parties. For the purpose of this Section 5.12, a relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.

- 5.13 **Establishing Hearing Procedures.** The Management Committee 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 Management Committee 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 Management Committee 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 two weeks' notice of the hearing to the 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.
- 5.14 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting of the Owners 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.
- 5.15 **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 Management Committee may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 5.16 **Reinvestment Fee Covenant upon Sale or Transfer of Unit.** The Management Committee 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 Management Committee and allowed by law. For purposes of this Section 5.16, a transfer is any change in the ownership of the Unit as reflected in the Office of Recorder for Davis County, Utah, regardless of whether it is pursuant to the a sale of the Unit or not but shall not include any transfer between the Declarant and a bulk purchaser often or more Units or Lots or between the Declarant and any affiliated entity. The amount shall be set forth by the Management Committee in the Rules consistent with Utah Code Ann. § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Unit for purposes of this section shall be the higher of: (a) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; (b) the purchase price paid for the Unit, related to the transfer; or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer

to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed \$250 or such other amount as may be established by law. 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: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

- 5.17 Pasture Area Leasing. Pasture Areas may be leased by the Association to agricultural tenants. Appropriate uses for Pasture Areas include but are not limited to storing livestock, farming, and other agricultural uses. The Management Committee, in its sole discretion, may determine the selection of Pasture Area tenants and the lease terms provided to such tenants. The Association will ensure that the Pasture Areas are maintained during any leasing vacancies. In the event that a Pasture Area tenant fails to maintain the Pasture Areas to a reasonable standard of care the Association may enter into the Pasture Area to provide adequate maintenance and repair. The Association, at its sole discretion, and by its Pasture Area lease terms may charge the tenant for Association repair and maintenance expenses and may choose to pursue eviction proceedings.
- 5.18 Trail Easement Maintenance. The Association is responsible to maintain the Trail that is within the confines of the Access and Utility Easement, in favor of Farmington City, on Parcel C, to be dedicated to UDOT. The Association will maintain the Trail to a standard of working condition.

## ARTICLE 7 BUDGETS & ASSESSMENTS

- 7.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 Budget and Regular Assessment.
- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year prior to the beginning of each fiscal year. The Management Committee may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or

that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget also shall include an estimate of Service Area Expenses, if any, for each Service Area and may include contingencies and other estimates as the Management Committee deems appropriate.

- (c) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit, subject to the Declarant rights in Section 20.6 herein.
- (d) The Management Committee shall determine the amount of Service Area Assessments to be paid by the Owners within each Service Area by dividing the total budget amount for each Service Area Expenses by the number of Units assigned to each such Service Area.
- (e) The Management Committee shall present the adopted budget to the Owners at an annual or special Association meeting.
- (f) Except during the Declarant Control Period (as defined in Section 20.3 herein), a budget may be disapproved within forty-five (45) days after the date of the meeting at which the budget was presents if: (i) the holders of at least fifty-one percent (51) of the total allocated interests in the Association vote to disapprove the budget; and (b) such vote is taken at a special meeting called for that purpose in accord with the requirements set forth in the Bylaws.

7.3 **Payment of Assessments.** Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment, and Service Area Assessment, as may be the case, annually or on such other quarterly or monthly installment basis as the Management Committee or the Manager may determine.

7.4 **Adjustments to Regular Assessments.** In the event the Management Committee 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 Management Committee, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.

7.5 **Adjustments to the Service Area Assessments.** In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet the Service Area Assessments, for any reason, the Management Committee may then revise the appropriate budget and each Owner's share of the new budget total based on the Owner's proportional share of the Service Area Expenses, as the case may be. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner thereafter shall pay to the Association the Owner's adjusted Service Area Assessment.

7.6 **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 Service Area Assessments. Any and all Assessment, 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.

- 7.7 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.
- 7.8 **Percentage Assessments.** Except as otherwise provided herein, and except for special Assessments to individual Units and Service Area Assessments, Assessments shall be allocated to Owners based on the Allocated Interest of each Unit.
- 7.9 **Rules Regarding Billing and Collection Procedures.** The Management Committee 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.
- 7.10 **Certificate of Payment.** Consistent with Utah Code § 57-8a-206, 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 Management Committee is authorized to charge a ten dollar (\$10.00) fee for issuance of a certificate; provided, however, the Management Committee may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 7.11 **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.
- 7.12 **Special Assessments to a Particular Unit or Units within a Particular Service Area.** Special Assessments may be levied by the Association against a particular Unit and its Owner or against Units within a Service Area and their respective Owners for:
- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
  - (b) Any other charge not included in an Assessment or Service Area Assessment designated by the Management Committee or the Manager as

pertaining to the individual Unit or to Units within a Service Area consistent with the Governing Documents;

- (c) Fines, late fees, collection charges, and interest; and
- (d) Attorneys' fees, costs and other expenses relating to any of the above.

- 7.13 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 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 Management Committee, in its discretion.
- 7.14 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 Management Committee, 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 Management Committee deems appropriate. The decision of the Management Committee 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. In the event that amount budgeted for any Service Area proves to be excessive in light of the actual Service Area Expenses, the Management Committee, in its discretion, shall either: (a) credit the excess against future Service Area Assessments for the particular Service Area with the excess, or (b) credit the excess against future Services Area Assessments for the particular Service Area that had an excess, as the case may be, or (c) refund the excess to the Owners of the Units assigned to the Service Area that had an excess, as the case may be.
- 7.15 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 Management Committee 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.
- 7.16 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.

## ARTICLE 8

### NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 8.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 8. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by taking title to a Unit, vests in the

Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

- 8.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of thirty-five dollars (\$35.00). Thereafter, an additional late fee charge of thirty-five dollars (\$35.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.
- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred title to the Unit to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 8.3 is separate and distinct from any lien rights associated with the Unit.
- 8.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Unit for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (a) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 8.5 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's Unit and added to the amount in delinquency (plus judgment interest and

collection charges, if appropriate).

- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson as trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and 57-8a-302 to Melyssa D. Davidson, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 8.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote and right to utilize the Recreational Amenities and other common facilities; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:
- (a) the impending termination of rights if payment is not received;
  - (b) the amount(s) past due, including any interest and late charges; and
  - (c) the right to request a hearing before the Management Committee.
- 8.9 **Requiring Tenant to Pay Rent to Association.**
- (a) Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant occupying any Unit for which an Assessment is more than sixty (60) days late; provided, however, that before requiring a tenant to pay lease payments to the Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:
    - (i) the Association's intent to demand the Owner's tenant pay his/her lease payments to the Association if payment is not received within fifteen (15) days;
    - (ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and
    - (iii) that any costs of collection, including, but not limited to attorneys' fees and other assessments that become due may be added to the total amount due and to be paid through collection of the tenant's lease payments;
  - (b) If the Owner fails to pay the amount owing after fifteen (15) days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's tenant by delivering written notice to the tenant, in accordance with the notice requirements in the Bylaws, that:
    - (i) due to the Owner's failure to timely pay Assessments, the Association

has notified the Owner of the Association's intent to collect all lease payments until the amount owing is paid, in full;

- (ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid, in full; and
  - (iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.
- (c) The Association shall mail to the Owner a copy of the notice to given to the tenant.
  - (d) The tenant to whom notice under Section 8.9(6) is given shall pay to the Association all future lease payments as they become due and owing to the Owner beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the Owner is paid.
  - (e) The delinquent Owner shall credit each payment that his/her tenant makes to the Association pursuant to this Section 8.9 against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required under Section 8.9(d).
  - (f) Within five (5) business days after the amount owing is paid, in full, the Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Association and a copy of said notice shall be mailed to the Owner.

8.10 **Attorneys' Fees Incurred as a Result of a Default.** In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments); and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

- 8.11 **Association Responsibility 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.

ARTICLE 9  
DESIGN CONTROLS

- 9.1 **Design Review Board.** Except as provided in Section 20.3 during the Declarant Control Period, the Design Review Board shall be composed of not more than three (3), natural persons appointed by the Management Committee. Persons serving on the Design Review Board shall serve at the pleasure of the Management Committee. The Management Committee may remove a member of the Design Review Board and appoint a new Design Review member at any time, provided that at all times there shall be a least one (1) person serving. Members of the Design Review Board may or may not be Management Committee members 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.
- 9.2 **Design Review Fees.** The operating costs of the Design Review Board, including the services of its planning consultants, professions 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.
- 9.3 **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 prep-approved by the Declarant, shall not require approval of the Design Review Board.
- 9.4 **Design Review Process.** Subject to further specification in the Rules, architectural designs, plans, and specifications showing the nature, kind, shape, color, size, materials, and location of all propose structures and improvements shall be submitted to the Design Review Board for review and approval prior to the commencement of

any construction or work. Specifically, among other things, the Design Review Board may require:

- (a.) Preliminary plans including: (i) plot plans to scale of the site with buildings located and elevation of floors shown above or below a designated point on the street; (ii) floor plans for each level to scale; (iii) elevations to scale of all sides of a detached dwelling; (iv) one major section through a detached dwelling; (v) a perspective; and (vi) specifications of all exterior materials.
- (b.) Final plans and specifications, including: (i) plot plans to scale showing the entire site, buildings, garages, walkways, driveways, fencing, lighting, retaining walls, elevations of existing and finished grade and contours (including those at the corners of the Lot and at adjacent property line and street fronts, and elevations of floors from a designated point on the street; (ii) detailed floor plans, (iii) detailed elevations, indicating all materials and showing existing and finished grades; (iv) detailed sections, cross and longitudinal, (v) details of cornices, porches, windows, doors, garages, steps, patios, fences, exterior light and other architectural elements.
- (c.) Detailed landscaping plans, if applicable, including specific information regarding any proposed grading, irrigation systems, drainage, plantings, fencing and/or Controlled Surfaces (as defined in Section 20.5 herein).
- (d.) Accessory Structure Plans. In the event of a dispute as to whether a structure or improvement constitutes an Accessory Structure, the determination of the Design Review Board shall be conclusive and binding.

9.5 **Building Permits and Other Approvals.** Any approval of the Design Review Board authorized or required under this Declaration is an entirely different than and separate from any building permit or other permit or approval that may be required under City ordinance or by any other governmental entity. Any and all necessary building permits and approvals must be obtained prior to the commencement of construction or work. Notwithstanding any other provision in this Article 9 or the Design Guidelines, the Design Review Board shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land-use regulations; (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other Person; (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist; or (d) any failure to carry out any construction in accordance with plans or specifications.

9.6 **General Standards.** In its review and consideration of an Owner's design review application, the Design Review Board shall evaluate, among other things: (a) the materials to be used on the exterior of Unit; (b) exterior colors; (c) harmony of architectural elements and design with other Units within the Project; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of landscaping with the Unit and with the Community-Wide Standard; (g) impact of lighting (interior and exterior) on night skies and neighboring Units; and (h) consistency of all of the foregoing with the Design Guidelines. Each Owner acknowledges, by taking title to a Unit, that determinations of the Design Review Board with regard to esthetic matters are subjective and may change as the

composition of the Design Review Board changes.

- 9.7 **Rules.** The Design Review Board may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these architectural covenants and/or refine or modify the design review process by the affirmative vote of a majority of the Design Review Board and such notice as may be required under the Act.
- 9.8 **Construction Rules.** Except on construction performed by the Declarant and its assigns, with regard to the development of the Project, construction of Subdivision Improvements and/or the initial construction of the Units, the Design Review Board may impose reasonable construction rules and regulations for any construction project affecting the exterior of any Unit or for any landscaping project to minimize the inconvenience to adjoining Owners during the period of construction. In connection therewith, the Design Review Board may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction. Concurrent with final plan submittal, an Owner shall deposit with the Design Review Board any performance deposit and/or executed voluntary lien form as may be required in the Rules. Any such performance deposit shall to be retained pending the completion (including clean up) of all improvement described in the final, approved plans and constructed on the Owner's individual Unit. In the event that the Owner, the contractor or the contractor's respective agents, representatives or employees (a) cause any damage; (b) fail to construct the Unit or improvements in accordance with the approved plans; or (c) fail to comply with the Design Guidelines, the Declaration or any rules or regulations adopted or promulgated by the Design Review Board or the Management Committee, the Design Review Board may use the performance deposit, among other things, to repair and/or rectify the damage or enforce the Design Guidelines, this Declaration, and any other Rules thus violated and cure any defect or problem caused by the non-compliance. In the event of the Design Review Board's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Association an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Design Review Board's delivery of written demand shall be deemed a material breach of the Design Guidelines and this Declaration and shall entitle the Design Review Board to deny the Owner's contractor's access to the Subdivision (including any of contractor's suppliers, subcontractors, employees and material men) and lien the Unit in an amount equal to the performance deposit deficiency.
- 9.9 **No Liability.** Neither the Design Review Board, nor the Management Committee, or the Association, or the Declarant shall be liable for damages to any Owner or any other Person by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove any design review application or plans. The Design Review Board shall have no liability or responsibility for any representations made to any Owner or prospective owner by any realtor or other third parties regarding the Design Guidelines or any design control covenant or the design review process. The decision of the Design Review Board shall be governed by these covenants and any rules or regulations duly adopted by the Design Review Board pursuant to these



- 9.10 **Written Records.** The Design Review Board shall maintain complete written records, which may in an electronic format, of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval, and all other formal actions taken by it under the provisions of Article 9. The records of the Design Review Board shall be maintained by the Association.
- 9.11 **Inspection and Compliance.** The Design Review Board shall have no duty or obligation to make inspections of any construction. Nothing herein, however, shall prevent the Design Review Board from making inspections prior to, during, or after construction. Unless otherwise provided in the Rules, upon the completion of any work for which an approved plan and specifications are required, the Owner shall give written notice of completion to the Design Review Board. Within thirty (30) days after receipt of such notice, the Design Review Board may inspect the work to determine its compliance with the approved plan. If the Design Review Board finds that the work was not done in substantial compliance with the approved plan, the Design Review Board may issue written notice to such Owner specifying the non-compliance and requiring the Owner to cure such non-compliance within thirty (30) days or any extension thereof granted.
- 9.12 **Enforcement.** Any construction, alteration or other work done or undertaken without first obtaining written approval from the Design Review Board shall be deemed to be a violation of this Declaration and the Design Guidelines. Upon written notice of a violation from the Design Review Board or the Management Committee, an Owner, at his/her own expense, shall conform or remove the nonconforming construction, alteration, or other work and shall restore the Unit or the affected portion thereof to substantially the same condition as existed prior to the nonconforming construction alteration or other work within thirty (30) days or such extension thereof granted. If an Owner fails to timely remedy the violation as required hereunder to the reasonable satisfaction of the Design Review Board, the Design Review Board or the Management Committee shall have the right to enter onto the Lot and may remedy the violation or remove the same or otherwise restore the Unit to substantially the same condition as existed prior to the violation without the same being deemed as trespass. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the Design Review Board and/or the Management Committee in taking corrective action, including attorneys' fees, regardless of whether a lawsuit was filed. The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Unit for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien as provided in Article 8. Such lien shall be (a) evidenced by a statement executed by the Association and notice of the lien recorded with the Office of Recorder for Davis County, Utah, and (b) subject to foreclosure in the manner provided by law.

- 9.13 **Variances.** The Design Review Board may authorize variances from the Design Guidelines or the design control provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, esthetic or environmental considerations may require, subject to any City approval required under the municipal ordinance. To be valid, a variance must be in writing, and approved by the Design Review Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guideline shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular Unit and provision of the Design Guideline or hereof covered by the variance, and shall not affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Unit.
- 9.14 **Appeal.** A decision of the Design Review Board may be appealed to the Management Committee; provided, however that any exercise of the Design Review Board's power by the Declarant pursuant to Section 20.3 herein on any design review matter shall be the final decision and shall not be appealable.
- 9.15 **Design Review Process Not Applicable to Declarant.** Notwithstanding anything in Article 9 to the contrary, the Design Review process and fees shall not apply to the Declarant.

ARTICLE 10  
RIGHT TO USE COMMON AREA AND FACILITIES

- 10.1 **Rights and Nonexclusive License to Use Common Area and Facilities.**
- (a) 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 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 as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Management Committee.
- (b) 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 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 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 and Service Area for purposes necessary for the proper operation of the Project.

- (c) 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:

- (a) 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; and
- (b) 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 Management Committee 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 effect the same at the request of the Association. However, no easement or

right of way can be granted pursuant to this paragraph 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.

## ARTICLE 11 USE LIMITATIONS AND CONDITIONS

- 11.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners and Community-Wide Standards. Pursuant to 57-Sa- 218(15) of the Act, the requirements of 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Association.
- 11.2 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit.
- 11.3 **Nuisance.** No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, City, county, state or federal body.
- 11.4 **Temporary Structures.** Subject to the exemptions in Sections 20.10 and 20.13 herein, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or used therein unless it is approved by the Management Committee.
- 11.5 **Parking.** Unless otherwise permitted by the Association in the no automobiles or other vehicles of any type (including, without limitation, oversized, commercial, or recreational vehicles, boats, or trailers) shall be parked, stored, or located within any portion of the Project except in the Unit's driveway or garage. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove or immobilize or cause to be

removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict or limit parking on City or public roadways within the Project by Owners, Occupants and by people associated with the use of Units. Notwithstanding anything to the contrary herein, nothing in this Section 11.5 shall give the Association any general police powers over the public portions of the project or the portion of the Project dedicated to the City.

- 11.6 **Outside Speakers and Amplifiers.** Except as permitted in the Rules and subject to City ordinance, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 11.7 **Repairs.** No repairs of any motor vehicles, detached machinery, equipment, or fixtures shall be made within the Project except as may be permitted by the Management Committee in the Rules.
- 11.8 **Unightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers, machinery, and equipment not a part of the Unit, shall be prohibited on Unit unless screened from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed of.
- 11.9 **Shooting and Hunting.** Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited.
- 11.10 **Animals.** Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets are allowed in the Project, subject to the terms and conditions of this Declaration and the Rules; provided, however, that no more than two (2) animals of any type may be kept in a Unit. No livestock or dangerous reptile may be kept in any Unit. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Management Committee may adopt Rules adding further Terms and Conditions related to animals within the Project not inconsistent with this Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have animals, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the Project shall be liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal. The Pasture Areas are exempted from the animal and livestock restrictions set herein.
- 11.11 **Residential Occupancy.**
- (a) No trade or business may be conducted in or from any Residential Unit unless:
    - (i) the business activity is disclosed to and approved by the Management

Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;

- (ii) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;
  - (iii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (iv) the business activity does not involve solicitation of Occupants or Owners of the Project;
  - (v) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Management Committee, in its sole discretion.
  - (vi) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
  - (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
  - (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
  - (ix) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- (b) Except as allowed under Section 11.12(a) above or as allowed under Article 18 herein, no Residential Unit may be used for any purpose other than a residential purpose. Notwithstanding anything to the contrary herein, nothing in this Section 11.12 shall apply to any support commercial development within the Project, if any is developed by the Declarant.

11.12 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions. No Residential Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Residential Unit shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Management Committee and/or Owners (as required in this Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 11.2 shall be null, void, and of no legal effect.

11.13 Slope and Drainage. Notwithstanding anything to the contrary in this Declaration, no grading, construction, or landscaping, and no structure, plant, or other material shall be

permitted or allowed to remain which may damage or interfere with the established ratios of Lots to open space or which may create erosion or sliding, or which may alter drainage channels or obstruct or retard the flow of water through such drainage channels or which may interfere with any utility or right of way. Each Owner shall be responsible to landscape and maintain his/her Lot in a manner consistent with existing land drain system and drainage pattern existing on the Lot at the time of the initial sale so as not to interfere with or impair the land drain system in the Project or the existing drainage pattern on any other Lot.

11.14 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. Notwithstanding, the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project shall not be deemed a violation of this Section 11.14.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) regardless of whether the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 11.14 shall survive any subsequent sale of the Unit by an indemnifying Owner.
- (c) As used in this Section 11.14, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 11.14, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.
- (d) The restrictions and obligations regarding Hazardous Substances and compliance with Environmental Law set forth in this Section 11.14 are separate from and in addition to the provisions in Article 22 and elsewhere in this Declaration regarding potential environmental hazard notices and disclosure and the remedial action work plan for the Project.

11.15 Snow Removal and Snow Stockpiling. The Association may establish locations within

the Project, which may change from time to time, to stockpile snow and ice accumulated during winter months which may encroach on Common Area. No Owner, Occupant or invitee may block, obstruct, impair, impede, or otherwise interfere with any snow removal or snow stockpiling by the Association.

## ARTICLE 12 INSURANCE

- 12.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance specific to a Service Area may be obtained by the Association and the cost included in the Service Area Expenses, as the case may be.
- 12.2 **Annual Insurance Report.** Prior to each annual meeting of the Association, the Management Committee shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and Utah law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage, and, if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;" and (d) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION." The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. The most recent annual insurance report shall be made available to the Owners at or before the annual meeting of the Association and shall be made available to any Owner at any other time upon written request.
- 12.3 **Property Insurance.**
- (a) Hazard Insurance.
- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Pasture Areas, Common Area and Facilities. Pursuant to § 57-8a-405(4) of the Act, the blanket policy of property insurance shall not apply to single-family detached dwellings that are not physically attached to any other dwelling or to a Common Area and Facilities structure. An Owner of a Unit that is single-family detached dwellings shall be responsible to obtain property insurance coverage for his/her own Unit.



- (1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies, including, without limitation, any single-family detached Unit.
  - (2) At a minimum, the blanket policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all other perils normally covered by "special form" property coverage.
  - (3) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
  - (4) The blanket policy shall include either of the following insurance endorsements to assure full insurable value replacement cost coverage: (a) a "Guaranteed Replacement Cost Endorsement" under which the insurer agrees to replace the insurable property regardless of the cost; or (b) a "Replacement Cost Endorsement" under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an "Agreed Amount Endorsement" which must waive or eliminate the requirement for coinsurance.
  - (5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (a) "Inflation Guard Endorsement," if available; (b) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (c) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000), or the insurable value of the building containing the equipment.
- (b) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (i) The Association's policy provides primary insurance coverage; and
  - (ii) Notwithstanding Subsection 11.3(b)(i) and subject to Subsection 11.3(b)(iii), the Owner is responsible for the Association's insurance deductible; and the property insurance portion of the Owner's insurance policy applies to that portion of the loss attributable to the Association's insurance policy deductible.
  - (iii) As used in this Subsection (3):

- (1) An Owner who owns a Unit that has suffered Unit Damage (as defined in the Act) as part of a Covered Loss (defined in the Act) is responsible for an amount calculated by applying the Unit Damage Percentage (defined in the Act) for that Unit to the amount of the deductible under the Association's property insurance policy.
  - (2) If an Owner does not pay the amount required under Subsection (1 I.3)(b)(iii)(2) within thirty (30) days after substantial completion of the repairs to the Unit or the Limited Common Area appurtenant to the Unit as may be applicable, the Association may levy an Assessment against the Owner for that amount.
- (c) **Flood Insurance.**
  - (i) Except for single-family detached Units and Lots, if any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that is not part of a building and all Common Area and Facilities within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of the Insurable Property.
  - (ii) If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils to Common Areas and Facilities not otherwise covered by blanket property insurance.
- (d) **Earthquake Insurance.** The Association may purchase earthquake insurance as the Management Committee deems appropriate for Common Area and Facilities and buildings or structures for which the Association has a legal obligation to obtain property insurance.
- (e) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep separate an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) **Association's Right to Not Tender Claims that are under the Deductible.** If, in the exercise of its business judgment, the Management Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the is responsible for any loss to any Common Area and Facilities; and (iii) an Owner who does not have a policy to

cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in section 11.3(b)(iii)(2), recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.

- (g) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under this Article 12 for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it may be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- 12.4 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 12.5 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 12.6 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Management Committee members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the

- Association; and (iv) officers, directors, and employees of any Manager of the Association.
- 12.7 Workers' Compensation Insurance. The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 12.8 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 12.9 Named Insured. The named insured under any policy of insurance shall be the Association. Subject to Sections 12.1 and 12.3(a)(i), each Owner shall also be an insured under all property and CGL insurance policies.
- 12.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner. In the discretion of the Management Committee or upon written request executed by Owners holding fifty percent (50%) of the total Allocated Interests, the Management Committee shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Section as the Owners or Management Committee (as the case may be) shall require.
- 12.11 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 12.12 Waiver of Subrogation Against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any individuals residing with a Unit Owner if an Owner resides in the Unit, and the Association's agents and employees.

- 12.13 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 12.14 **Applicable Law.** This Declaration is specifically subjecting the Association to the applicable insurance requirements and provisions of Part 4 of the Utah Community Association Act, and any amendments thereto enacted by law. It is the intent of this Section that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 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 a portion thereof, is taken by eminent domain, or sold under threat thereof, the Management Committee 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 Management Committee shall wind down the Association in accordance with applicable law.
- 13.4 **Priority and Power of Attorney.** Nothing contained in this Article 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, or any part thereof.

ARTICLE 14  
AMENDMENTS

- 14.1 **General Amendment Requirements.** Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article 21 herein and elsewhere in this Declaration, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 14.2 **Scope of Amendments.** Subject to Article 21 herein, this Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the

Association.

- 14.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided in Section 14.1 shall be executed by the President and the Secretary of the Management Committee shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the Office of the Recorder for Davis County, Utah.
- 14.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 14.5 **Amendment to Service Area.** Subject to Article 21 herein, any group of Owners may petition the Management Committee to designate their Units or Lots as a Service Area for the purpose of receiving from the Association special benefits or services from the Association which are not provided to all Units or Lots. Upon receipt of a petition signed by a majority of the Owners of the Units within the proposed Service Area, the Management Committee shall examine and consider the terms upon which the requested benefits or services might be provided and shall notify the Owners in the proposed Service Area of such terms and attendant expenses (which may include a reasonable administrative charges). If such a petition is approved by the Management Committee and by the Declarant during the Declarant Control Period, and by the Owners holding at least sixty-seven percent (67%) of the Allocated Interests within the proposed Service Area, the Association shall provide the requested benefits or services under the terms and conditions established by the Management Committee. The costs and administrative charges associated with such benefits or services shall be assessed as Service Area Assessments to the Units within such newly-formed Service Area.
- 14.6 **Amendment to Conform to Law.** The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of community association law, a written opinion

explaining in detail and opining that the proposed amendment may be sought pursuant to this section,

- (b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded,
- (c) The Management Committee must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Declaration; (iii) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Association (1) notifies the Owner that it intends to amend the Declaration pursuant to this section, (2) provides the Owner a right to object to the amendment within thirty (30) days, and (3) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this Section 14, no more than thirty percent (30%) of the Allocated Interest holders have objected, in writing, to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section 14, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Davis County.

## ARTICLE 15

### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 15.1 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 and Design Guidelines. 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.
- 15.2 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.
- 15.3 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.

- 15.4 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 15.5 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a single family-housing residential planned community 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 article and 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.
- 15.6 **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.
- 15.7 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 15.8 **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 Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 16 NOTICE

- 16.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:
- (a) Notice to an Owner from the Association:
- (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;



- (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent;
  - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (v) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.
  - (vi) Notwithstanding anything to the contrary in this Section 16.1, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co- Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
  - (vii) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (1) two (2) days after the event or action for which notice was given or (2) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (i) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
  - (ii) In case of any emergency involving immediate and substantial damage to a Unit, the Common Areas and Facilities, or another Unit, before entering the Unit, the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (iii) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit, the Association shall: (1) give notice to the Owner that an entry is required at least one (1) week in advance with such notice stating:

- (a) that the Association or its authorized Persons will enter the Unit, (b) the date and time of the entry, (c) the purpose of entering the Unit, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, (f) any other information the Association deems appropriate to include; and
- (2) post the written notice described above on the front door to the Unit at least three (3) days prior to entry into the Unit.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
- (i) by a written notice delivered personally to the Manager or President, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the Management Committee has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (iv) by facsimile (whether to a machine or by other means) to the Association sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 17  
ATTORNEYS' FEES AND COSTS

17.1 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal

counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, 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.

- (b) **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.
- (c) **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 Term and Condition, or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition 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.

## ARTICLE 18 RESERVES

18.1 **Requirement for Reserves.** Subject to 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:

- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments.
- (b) **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 Management Committee determines, based on the reserve analysis, to be prudent. For purposes of this Section 18.1, 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.
- (c) **Owner Veto.** Within 45 days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the total Allocated Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
- (d) **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.

- (e) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.
- (f) **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.
- (g) **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.
- (h) **Summary and Copies of Reserve Analysis.** The Association shall annually 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.

## ARTICLE 19 LEASING AND NON-OWNER OCCUPANCY

19.1 **Declaration and Rules Govern Non-Owner Occupancy.** The leasing and non-owner occupancy of Residential Units shall be governed by this Article 19, the Rules, and procedures adopted as provided herein.

19.2 **Definitions.** For the purpose of this Article 19, the following definitions shall apply:

- (a) "Non-Owner Occupied Unit" means:
  - (i) For a Unit owned in whole or in part by a natural person or persons, the

Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or

- (ii) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(b) "Family Member" means:

- (i) the grandparent, parent, sibling, child, or grandchild of an Owner and the grandparent, parent, sibling, child, or grandchild of an Owner's spouse; or
- (ii) in the case of a Unit owned by a trust or other entity created for estate planning purposes, an individual occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (1) a current Occupant of the Unit; or (2) the parent, child, or sibling of the current Occupant of the Unit.

19.3 Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 19.4 and 19.5 below, any Residential Unit may be leased or non-Owner Occupied.

19.4 Permitted Rules. The Management Committee may adopt Rules:

- (a) Regarding reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like;
- (b) Establishing other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration; and
- (c) Limiting the total number of Non-Owner Occupied Units within the Project if necessary to satisfy the requirements of a Lender for financing the purchase of Units.
- (d) Limiting the total number and or specific Property Management Companies permitted to manage Units within the Project.

19.5 Requirements for Leasing and Non-Owner Occupancy. Owners of Residential Units must comply with the following provisions:

- (a) Subject to the exemptions in the Act for an Owner's military deployment or an Owner's temporary relocation by an employer, and subject to applicable federal requirement and restrictions governing Units within an active-adult community within the Project, any lease or agreement for otherwise allowable non-owner occupancy shall be in writing, for an initial term of at least six (6) months, and shall require that the Occupant shall comply with the Declaration, the Bylaws, and the Rules, and specify that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;
- (b) If required in the Rules or requested by the Management Committee, a copy of any lease or other agreement for non-owner occupancy shall be delivered to the

Association within the time period provided for in the Rules or required by the Management Committee;

- (c) An Occupant may not occupy any Unit for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not);
- (d) Lease of only a portion of the Unit is prohibited (no basement or individual room rentals).
- (e) The Owner shall be responsible for the Occupants of the Units and for any invitee of any Occupant and shall ensure their compliance with this Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, the Association shall have the right (but not the obligation) to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Association, the Management Committee, and the Manager shall not be liable for any action taken pursuant to this Subsection 19.6(c) and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Subsection.

19.6 Exceptions for Family Members. If only Family Members occupy a Residential Unit, then notwithstanding anything to the contrary herein:

- (a) Subsections 19.6(a) and 19.6(b) above shall not apply to that occupancy;
- (b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner; and
- (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Management Committee until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

## ARTICLE 20 GENERAL PROVISIONS

20.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions 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.

- (a) 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.

- 20.2 **No Liability of Officers.** To the fullest extent permitted by applicable law, neither the Management Committee 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.
- 20.3 **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.
- 20.4 **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.
- 20.5 **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, 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 unless the Association assumes the obligation for maintenance of the park strip.
- a. 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, Street Tree Planting Plan and applicable City ordinance. Initial landscaping shall be completed within nine (9) months of closing on the sale of the Unit.
  - b. A landscaping bond may be required by the City in addition to any performance bonds or deposits required by the Design Review Board.
  - c. No concrete, masonry product, pavers, bricks, stone, cobblestone, tile, terrazzo, slate, slabs, rocks, pebbles, gavel, permeable or impermeable surfaces (collectively, "Controlled Surfaces") may be installed or constructed as part of a Unit's landscaping without the express, prior written authorization of the Design Review Board. Front, side, rear yard, and park-strip landscaping comprised primarily of controlled surfaces is prohibited.

20.6 **Variances.** The Management Committee, at its option and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Declaration if the Management Committee determines, in its discretion: (a) either that the Term and Condition 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 Term and Condition 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 and not prohibited by the Development Agreement. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with the Development Agreement, 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.

**20.7 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 effect 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.

20.8 **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 Management Committee 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.

20.9 **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.

- 20.10 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE 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 MERCHANT ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.**

ARTICLE 21  
DECLARANT RIGHTS

- 21.1 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 Article 21. 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 Article 21.
- 21.2 Right to Appoint the Management Committee During Declarant Control Period. The Declarant shall have the right to appoint and remove all Management Committee members during the Declarant Control Period. In the appointment of Management Committee members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee 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 Management Committee without appointing Management Committee members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 21.3 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 Management Committee's 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.
- 21.4 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.

- 21.5 **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.
- 21.6 **Assessment Exemption.** The Declarant shall be exempt from any Assessments including any Regular Assessment, Service Area Assessments or Special Assessment.
- 21.7 **Right to Amend Declaration, Bylaws, Articles of Incorporation, Design Guidelines and Rules.** 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 Service Area or Additional Covenants, the Bylaws, the Articles of Incorporation, 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.
- 21.8 **Right to Designate 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 Service Area and to designate the particular Units assigned to such 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.
- 21.9 **Assignment of Special Declarant Rights.** The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, 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.
- 21.10 **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.
- 21.11 **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents and, specifically, in this Article 21, 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*.

- 21.12 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 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 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.
- 21.13 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 Management Committee may so designate at any time thereafter.
- 21.14 Right to Use Common Area and Facilities for Special Events. The Declarant may use the Common Area and Facilities to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions: (a) the availability of the Common Area and Facilities; (b) payment of costs and expenses incurred and indemnification of the Association against any loss or damage resulting from the special event; (c) return of the Common Area and Facilities in the same condition as existed prior to the special event.
- 21.15 Exemption from Service Provider and Vendor Conflict Provision. The restrictions set forth in Section 5.12 of this Declaration shall not apply to service providers or vendors engaged by the Association during the Declarant Control Period.
- 21.16 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 21 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.
- 21.17 Declarant Exemption from Statutory Obligations. Pursuant to § 57-Sa-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-Sa-217 of the Act. Pursuant to § 57-Sa-211(10) of the Act and Article 18 herein, § 57-Sa-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.

ARTICLE 22  
CONFLICT AND LITIGATION AVOIDANCE

- 22.1 **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 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. Consistent with this desire to avoid litigation but, nevertheless, to ensure a reasonable avenue for recovery against a Person responsible for faulty construction, the Declarant may obtain and provide warranties to the Association from subcontractors that the Association may enforce related to the development and construction of the Project. It is the intent of the parties hereto, as agreed to by each Owner by and upon taking title to a Unit, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages of any kind arising from or related to construction or development of the Project. The intent of this Article 22 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 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.
- 22.2 **Association Warranties.** The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.
- 22.3 **Waiver of Subrogation and Release.** The Association and each Owner, by and upon taking title to a Unit, waives any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant (including principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release the Declarant (including principles, officers, managers, shareholders,

members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives. The Association and each Owner agree that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant (including its principles, officers, employees, owners, or representatives) from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

22.4 **Declarant Litigation.**

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed: (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period to facilitate the Declarant's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, its contractor or subcontractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) "Notice of Claim" shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting

opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged defect or condition, if applicable; (v) samples of any alleged defective materials; (vi) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives), for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.
- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Association shall indemnify and defend the Declarant (including its principles, officers, managers, shareholders, members, employees, agents and representatives) against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Declarant's development and/or construction of the Project and/or any damages arising therefrom. Except only as may be limited by law, by and upon taking title to a Unit, each Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either a Association Warranty or an Owner Warranty. The Association and each Owner acknowledge and agree that such warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim and to indemnify the Declarant from and against any liability arising therefrom.
- (g) Subject only to any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units and Common Areas and Facilities "AS IS," with all faults and with no warranties of any kind except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**

- (h) If otherwise allowed by law notwithstanding the terms of this Article 22, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant or any contractor or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have a properly-noticed meeting of the Owners, with all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those Persons present, including the Management Committee, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:
- (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: "The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Unit and your ability to sell your Unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue";
  - (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;
  - (iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;
  - (iv) a written statement of each Management Committee member indicating that member's position on the litigation;
  - (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;
  - (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and
  - (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action.

In addition to the requirements above and before commencing any action, the

Association must obtain the approval of eighty-five percent (85%) of the total Allocated Interests in the Association (not 85% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Any such a special meeting must occur no sooner than thirty (30) days and not later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any such action, including but not limited to copying costs, deposition costs, expert witness costs, and filing fees.

- (i) Any agreement with a law firm or attorney under which the law firm would represent the Association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (1) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action as necessary to prosecute the action as quickly as the court system will allow; (2) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum (a) the work that was completed in the last month, (b) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month broken down by time entry, person performing the work, and a description of each time entry, (c) the costs incurred by the attorneys and any experts in the prior month, (d) a running tally of all costs and time, by attorneys and staff members, since the beginning of the action updated monthly, (e) a list of what is needed to move the action toward resolution, (f) the projected dates for each action that is needed to move the action toward resolution, (g) an explanation of why any projected action cannot be completed immediately; (3) the attorney or law firm will provide an opinion letter regarding the Association's claims prior to commencing any action that will, at a minimum, explain each claim, cite the law supporting the claim, cite the facts supporting the claim, provide an application of the law to the facts and analysis of each claim, cite any potential defenses or weaknesses to any claim including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Association's likelihood of success on each claim, an analysis of potential damages including citations to the law and facts supporting that analysis, and an opinion of the lawyer or law firm on the damages the Association would likely be awarded for each claim; and (4) a requirement that the Association be permitted to terminate the engagement of the law firm or attorney at any time with no requirement to pay any attorney fees incurred under a contingency arrangement up to that date if, in the Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any disruption to the operations of the Association is not worth the continuation of the action, (c) the Association determines, at any time, that the legal and factual risks



associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.

- (j) The existence of procedures and/or requirements in this Article 22 applicable to claims against the Declarant or its contractors or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that are prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.
- (k) Prior to engaging any lawyer or firm to represent the Association related to any litigation described in this section, the Association shall obtain independent counsel to review the engagement letter governing that representation and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this declaration.

22.5 Land Owners. 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 Article 22.

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DATED THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2021.

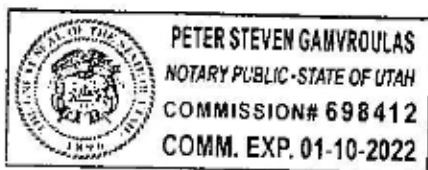
IVORY DEVELOPMENT, LLC

By:   
Christopher P. Gamvroulas

Its: President

STATE OF UTAH )  
COUNTY OF SALT LAKE )<sup>SS</sup>

On this 2<sup>ND</sup> day of FEBRUARY, 2021, personally appeared before me CHRISTOPHER P. GAMVROULAS, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he the PRESIDENT, of IVORY DEVELOPMENT LLC and that said document was signed by him in behalf of the said Corporation with all necessary authority, and acknowledged to me that said Corporation executed the same.



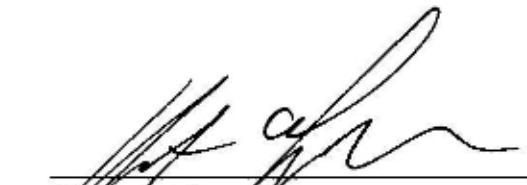
  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The Units, Lots, and real property referred to in the foregoing Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Flatrock Ranch are located in Davis County, Utah and are described more particularly as follows:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; FARMINGTON, DAVIS COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT  $S00^{\circ}15'33''E$  584.52 FEET ALONG THE WEST LINE OF SAID NORTHWEST QUARTER FROM THE NORTHWEST CORNER OF SAID SECTION 26 AND  $N89^{\circ}49'35''E$  25.10 FEET; AND RUNNING THENCE  $N89^{\circ}49'35''E$  1121.53 FEET; THENCE  $S88^{\circ}24'27''E$  144.42 FEET; THENCE  $N89^{\circ}49'35''E$  26.84 FEET; THENCE  $N00^{\circ}10'25''W$  1.43 FEET; THENCE  $N89^{\circ}52'35''E$  1117.11 FEET; THENCE  $S09^{\circ}57'09''W$  487.24 FEET; THENCE  $S00^{\circ}31'39''W$  73.28 FEET; THENCE  $S89^{\circ}49'35''W$  2226.36 FEET; THENCE  $N03^{\circ}35'27''W$  494.69 FEET; THENCE  $N47^{\circ}04'14''W$  92.35 FEET TO THE POINT OF BEGINNING.

To P.O.B

CONTAINS 29.11 ACRES IN AREA, 40 LOTS AND 3 PARCELS

ROTATE BEARINGS COUNTERCLOCKWISE  $0^{\circ}20'08''$  TO ACHIEVE NAD 83 DATUM BEARINGS

Parcel Numbers 08-652-0001 through 08652-0043

EXHIBIT B  
**BYLAWS  
FOR THE  
FLATROCK RANCH ASSOCIATION**

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## BYLAWS

These bylaws are hereby adopted and established as the Bylaws for the Flatrock Ranch Association (the " Association" or the "Association"). These Bylaws and any valid amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants of the Project.

### ARTICLE I DEFINITIONS

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Flatrock Ranch ("the Declaration") shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

### ARTICLE II OWNERS

- 2.1 **Annual Meetings.**
  - (a) **Requirement.** An annual meeting of the Owners shall be held no less than once each calendar year.
  - (b) **Date and Time.** The date, time and location of the annual meeting shall be determined by the Management Committee, in its discretion.
  - (c) **Purpose.** The Annual Meeting shall be held for the following purposes.
    - (i) electing members of the Management Committee;
    - (ii) distributing of the budget, if it was not distributed before the meeting;
    - (iii) announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
    - (iv) transacting such other business as may properly come before the meeting.
  - (d) **Approval of Minutes.** The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Management Committee's discretion, by the Management Committee at a subsequent meeting of the Management Committee.
  - (e) **Election of Management Committee Members.** If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.



2.2 **Special Meetings.**

- (a) **Who May Call.** Special meetings of the Owners may be called by the Management Committee, the President, or upon the written request of Owners holding not less than fifty percent (50%) of the Allocated Interest of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 **Place of Meetings.** The Management Committee may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting.

2.4 **Notice of Meetings.** The Management Committee shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30) nor less than ten (10) days prior to the meeting.

2.5 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than thirty (30) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Person appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 **Quorum.** Those Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.

2.7 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting.

- 2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but one Owner shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 **Ballots and Written Consent.** The Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act.
- 2.10 **Minutes of Meetings.** The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request consistent with Section 4.4 of the Declaration.

### ARTICLE III MANAGEMENT COMMITTEE

- 3.1 **Number, Tenure, Qualifications, and Election.**
- (a) **Number of Members.** The Management Committee shall be composed of an odd number of at least three (3) but no more than five (5) individuals meeting the qualifications stated in the Declaration and Section 3.1(b) below, subject to the Declarant Rights set forth in the Declaration.
  - (b) **Member Requirements.** At all times after the end of the Declarant Control Period and turnover of the Project from the Declarant, at least two (2) of the Management Committee members must have as their primary residence a Unit in the Project. For purposes of service on the Management Committee an "Owner" may include the spouse of an Owner. Any candidate whose election or appointment would contravene requirements of this Section 3.1(b) shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss. Candidates must also be current on all Assessments.
  - (c) **Term.** Except during the Declarant Control Period, and except for the terms of at least two (2) of the initial member of the Management Committee elected upon

turnover of management of the Association in order to create staggered terms, the term of each Management Committee member shall be two (2) years.

- (d) **Nominations.** At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (e) **Disqualification.** If any Management Committee member is alleged to not meet the qualification requirements in the Declaration and any Management Committee member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee member is qualified or not, and during this period shall not make any further decisions. If the Management Committee member is not qualified, the Management Committee member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee member was not qualified. If a Management Committee member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section.
- (f) **Removal for Failure to Participate.** If any Management Committee member shall fail to appear at three (3) successive regular Management Committee meetings in a row or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Management Committee members may by unanimous vote remove that member and appoint a new member.

### 3.2 Meetings.

- (a) **Regular Meetings.** The Management Committee shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) **Who Is Entitled to Attend.** Consistent with Utah Code Ann. § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.

- (c) **Special Meetings.** Special meetings of the Management Committee may be called by or at the request of any two Management Committee members or the President. Notice of any special meeting shall be given at least 48 hours prior thereto to each Management Committee member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (d) **Quorum and Manner of Acting.** A majority of the Management Committee members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee members shall be the act of the Management Committee. The Management Committee members shall act only as a Management Committee, and individual Members shall have no powers as such.
- (e) **Place and Notice of Meetings.** The Management Committee may designate any place in the City as the place of meeting for any regular meeting called by the Management Committee but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Management Committee members and Owners shall be given at least ten (10) days' notice of regular meetings.
- (f) **Executive Session.**
  - (i) The Management Committee or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Management Committee who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Management Committee.
  - (ii) The minutes of the meeting at which an executive session is held shall include:
    - (1) The purpose(s) of the executive session in sufficient detail. By way of example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "To discuss the pending litigation with XYZ," or "to discuss a complaint of a Rule violation."
    - (2) Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as "Decision made regarding attorney-client privileged issue that are recorded in Separate and attorney-client privileged minutes of the Executive

Session" and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-committee members only as required by law for the disclosure of attorney-client privileged information.

- (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
- (iv) Executive sessions may be held to discuss and make decisions related to the following matters:
  - (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;
  - (2) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
  - (5) The Management Committee or the Sub-Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

### 3.3 Informal Action and Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each and every Management Committee member, in writing, either:
  - (i) votes for the action or
  - (ii) votes against or abstains from voting, and fails to exercise his/her right to demand that action not be taken without a meeting.

- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (i) describing the action taken;
  - (ii) signed by each Management Committee member; and
  - (iii) not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Management Committee members then in office were present and voted.
- (d) A Management Committee member may revoke consent to any action given pursuant to this section by communicating, in writing, that the member has changed his/her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee and may be described as an action taken at a meeting of the Management Committee members in any document.
- (g) For purposes of this section:
  - (i) "Signed" or "signature" is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
  - (ii) "Writing" shall refer to an email, letter, facsimile, or any other physical or electronic document.
  - (iii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (iv) Any response to any electronic communication shall be:
    - (v) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
    - (vi) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  - (vii) A communication shall satisfy the requirement to "describe the action taken" if:
    - (l) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;

- (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
  - (3) the writing from the Management Committee member otherwise sufficiently references the proposed action.
- 3.4 **Compensation.** No Management Committee member shall receive compensation for any services that he/she may render to the Association as a Management Committee member; provided, however, that a Management Committee member may be reimbursed for expenses incurred in the performance of his/her duties as a to the extent such expenses are unanimously approved by the Management Committee.
- 3.5 **Resignation and Removal.** A Management Committee member may resign at any time by delivering a written resignation to any member of the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.
- 3.6 **Vacancies.** If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee member is removed. Any Management Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their predecessor.

#### ARTICLE IV OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a president or chairperson (the "President"), vice-president or vice chairperson ("Vice-President"), secretary (the "Secretary"), and treasurer (the "Treasurer").
- 4.2 **Election, Tenure and Qualifications.** The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office except during the Declarant Control Period or any period in which there is only three (3) Management Committee members, the Vice President may also serve as Treasurer. All officers must be members of the Management Committee during the entire term of their respective offices.
- 4.3 **Subordinate Officers.** The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title,

hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers need not be members of the Association.

- 4.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Management Committee member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.
- 4.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.
- 4.6 **The President.** The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.7 **The Vice President.** The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.
- 4.8 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.
- 4.9 **The Treasurer.** The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when



requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.

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

#### ARTICLE V SUB-COMMITTEES

- 5.1 **Designation of Sub-Committees.** The Management Committee may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers, including, without limitation, Village Sub-Committees. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Management Committee member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.
- 5.2 **Proceedings of Sub-Committees.** Each Sub-Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.
- 5.3 **Quorum and Manner of Acting.** At each meeting of any Sub-Committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Management Committee hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Management Committee.
- 5.4 **Resignation and Removal.** Any member of any Sub-Committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of such Sub-committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 **Vacancies.** If any vacancy shall occur in any Sub-Committee designated by the Management Committee due to disqualification, death, resignation, removal, or

otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

## ARTICLE VI INDEMNIFICATION

- 6.1 **Indemnification.** No Management Committee member, officer, or member of a Sub-Committee (including any member of the Design Review Board) shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Management Committee member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Management Committee member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.
- 6.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Management Committee members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Management Committee member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII  
AMENDMENTS

- 7.1 **Amendments.** Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Lots holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period as set forth in the Declaration.
- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Davis County, Utah.

ARTICLE VIII  
WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
  - (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
  - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting,
  - (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
  - (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the

specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.

8.3 **Irregularities that Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:

- (a) Any failure to comply with the provisions of the Declaration.
- (b) Any failure to obtain the proper number of votes required to pass a measure.