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WHEN RECORDED MAIL TO:

Ivory Development, LLC  
978 East Woodoak Lane  
Salt Lake City, UT 84117

## **Declaration of Covenants, Conditions and Restrictions for Towns on Main**

In Reference to Tax ID Number(s):

03-288-0101 thru 0112

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
TOWNS ON MAIN

This Declaration of Covenants, Conditions, and Restrictions for Towns on Main (the "Declaration") is made and executed by Ivory Development, LLC, a Utah limited liability company with a principal office located at 978 Woodoak Lane, Salt Lake City, Utah 84117 ("Ivory"), as Developer and Declarant, and shall be effective upon recording with the Office of Recorder for Davis County, Utah.

RECITALS

A. This Declaration affects and encumbers the real property located in Bountiful City, in Davis County, Utah and more fully described in the attached Exhibit A, which is incorporated herein by reference.

B. Declarant has or is in the process of developing the Property as a planned residential townhome community.

C. The Declarant desires, by executing and recording this Declaration of Covenants, Conditions, and Restrictions for Towns on Main to: (a) develop the Project in accordance with the Utah Community Association Act and other Utah laws; (b) establish the governance structure and procedures for the Association; (c) define the respective rights and responsibilities of the Association and the Owners; and (d) establish covenants, conditions, and restrictions for the benefit of the Association, the Owners, and the Project.

D. 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 to and shall run with the land and shall be binding upon 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, each 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 accepts the burdens and responsibilities that accompany these benefits.

F. Capitalized terms in this Declaration are defined in Article 1 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 makes the following Declaration:

ARTICLE 1  
DEFINITIONS

As used herein, unless the context otherwise requires:

1.1 “Act” shall mean and refer to the Utah Community Association Act codified beginning at § 57-8a-101, Utah Code.

1.2 “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.

1.3 “Area of Common Responsibility” shall mean and refer to Common Areas and Facilities, Benefitted Common Area, and any other area which the Association is responsible to maintain, repair, replace, administer and regulate.

1.4 “Area of Personal Responsibility” shall mean and refer to the area which the Owner is responsible to maintain, repair, and replace.

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, including, but not limited to, regular and special assessments, Benefitted Common Area Assessments, Service Area Assessments, and any individual charges, fines, late fees, interest as provided in this Declaration or authorized by law.

1.7 “Association” shall mean and refer to the Towns on Main Homeowners Association, the membership of which shall include and be comprised of the Owners in the Project.

1.8 “Board of Directors” or “Board” shall mean and refer to the duly elected or appointed managing body for the Association.

1.9 “Board Member” shall mean and refer to a member of the Board of Directors, also known as a “Director.”

1.10 “Benefitted Common Area” shall mean and refer to any common parcels or improvements designated by the Declarant or the Association which primarily benefit the Units located in a particular development phase within the Project. By way of illustration and not limitation, Benefitted Common Area might include such things landscaped open space or common parcels identified on the plat for a particular phase of the Project.

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

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

1.13 “Building” or “Buildings” shall mean and refer to any and/or all of the buildings constructed on the Property.

1.14 “Bylaws” shall mean and refer to the Bylaws of the Towns on Main Homeowners Association attached as Exhibit C to this Declaration and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.

1.15 “City” shall mean and refer to Bountiful City, a political subdivision of the State of Utah.

1.16 “Common Area and Facilities” or “Common Area” shall mean and refer to: the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area designated as such the Plat, including any area designated as open space not dedicated to the City; (b) all entry monuments or other permanent Project signage; (c) any private street, roadway, lane, alley or cul-de-sacs within the Project not designated as Benefitted Common Area; (d) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area not dedicated to the City or public utility; (e) any fence or wall installed by Declarant on common property; (f) all recreational amenities within the Project, and (g) 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 and operated by the Association.

1.17 “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; (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) security, landscape maintenance, snow removal, and other services; (d) insurance and bonds required or allowed by this Declaration or Utah law; (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.

1.18 “Community-Wide Standard” 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 or described in this Declaration or Rules. The Community-Wide Standards may or may not be set forth in writing.

1.19 “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Towns on Main, including all attached exhibits, which are incorporated by reference, and any and all valid amendments to this Declaration.

1.20 “Declarant Control Period” shall mean and refer to the period of time during which the Declarant owns any Unit within the Project.

1.21 “Governing Documents” shall mean and refer to this Declaration, the Bylaws, the Articles, the Rules, and any other written instrument through which the Association may exercise power or manage, maintain, or otherwise affect the Project.

1.22 “Lender” shall mean and refer to the holder of a mortgage or deed of trust on a Unit.

1.23 “Limited Common Area” shall mean and refer to those portions of the Common Area identified on the plat reserved for the exclusive use and benefit of a particular Unit or Units to the exclusion of other Units as described more fully herein.

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

1.25 “Manager” shall mean and refer to a Person or Persons engaged by the Association to manage the Project.

1.26 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, entering into, or living in Unit within the Project, including, without limitation, family members, tenants, and invitees of an Owner or an Occupant. More than one Occupant is referred to herein as “Occupants.”

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

1.28 “Plat” shall mean and refer to any or all of the final recorded plat maps for Towns on Main of record and on file with the Office of Recorder for Davis County, Utah.

1.29 "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."

1.30 "Project" shall mean and refer to the Towns on Main project and all structures and improvements thereon including Units and the Common Area and Facilities.

1.31 "Property" shall include all real property included in the Project and shall include all easements and rights appurtenant thereto.

1.32 "Service Area" shall mean and refer to a group of Units designated by Declarant or the Association 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 or may not correspond to a particular development phase. A Unit may be assigned to more than one Service Area.

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

1.34 "Service Area Expenses" shall mean and refer to the estimated and/or 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.

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

1.36 "Terms and Conditions" shall mean and refer to any one or all of the terms, covenants, conditions, rights, obligations, and restrictions set forth in the Governing Documents.

1.37 "Unit" shall mean and refer to a townhome unit within the Project more particularly described herein which may be independently owned and is intended for use and occupancy as a single-family dwelling. The term "Unit" includes the Lot. Unless the context requires otherwise, reference to a Unit shall include the appurtenant Allocated Interest. A Unit does not include Common Area and Facilities, Benefitted Common Area, or property or improvements dedicated to the City or the public. More than one Unit is referred to herein as "Units."

ARTICLE 2  
THE PROJECT

- 2.1 Description of the Project. The Project is a 12-Unit townhome community which may be developed in phases. The Project is not a cooperative and is not a condominium.
- 2.2 Project Name. The Project is named the "Towns on Main." Notwithstanding, the name used by the Association for the Project may be different than the name identified in this Declaration.
- 2.3 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 development and management code provisions and County ordinance.
- 2.4 Registered Agent. The registered agent of the Association shall be as provided for in the entity filings of the Association.
- 2.5 Binding Effect of Governing Documents on the Project. The Declarant hereby declares that the Property 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 the recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner. 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.

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

- 3.1 The Unit.
- (a) The distinct Lot number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
  - (b) Subject to further specification on the Plat, 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, garage, and fixtures, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall from 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., but not including 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, water or sewer lines, other private or public utility line, and any other fixtures located within 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) Variations 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.

### 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 as limited common area or limited common ownership that is association 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 or Units 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 and Common Expenses. The Owner of Unit shall be entitled to vote the Unit's Allocated Interest for all matters related to the Association on which the 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 20 and subject to the Association's right to suspend an Owner's voting rights for violation of the Governing Documents. 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.

## ARTICLE 4 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

4.1 Organization of Association. The Association shall serve as the organizational body for all Owners. 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 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.

4.2 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 title 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.

4.3 Board of Directors. The governing body of the Association shall be the Board of Directors selected pursuant to the Bylaws.

4.4 Board Acts for Association. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board, in all instances, shall act on behalf of the Association.

4.5 No Estoppel or Reliance on Actions or Authorization Contrary to Governing Documents. No one may rely upon any authorization (from a Board Member 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 asserting any such 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.

4.6 Registration with the State. In compliance with the Act, 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. This includes, but is not limited to, setting budgets and collecting assessments, enforcing use restrictions, adopting rules, obtaining insurance, giving notice, holding meetings, and any other right or obligation given to the Association or the Board in this Declaration.

5.2 Association Obligation for Area of Common Responsibility. The Association shall be responsible for the maintenance, repair, and replacement requirements for the Area of Common

Responsibility. 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 and Benefitted Common Area. Unless otherwise determined by the Board, the Association shall be responsible for maintenance, repair and replacement of Building roofs and Building exteriors. The Association shall do all such other and further acts that the Board deems necessary or appropriate to preserve and protect the Benefitted Common Area, the Common Area and Facilities, and the Project, in accordance with the general purposes specified in this Declaration and the Community-Wide Standard. Nothing in the foregoing provisions of this Section, however, shall be construed to prevent Declarant or the Association from entering into shared maintenance or cost agreements with another homeowners' association or with the City.

5.3 Payment of Common Expenses. The Association shall provide for the payment of the Common Expenses.

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

5.5 Adopting and Enforcing Rules. The Association is empowered to 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. 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 Board'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.

5.6 Hiring Managers and Delegating Responsibilities. The Association may, but is not required to, engage a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board 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 Board at any time, with or without cause. The Board shall be responsible to negotiate the terms of engagement, including compensation, benefits, and scope of services provided.

5.7 Other Necessary Rights. The Association shall have all other rights and authority reasonably necessary to carry out its obligations and to enforce the Terms and Conditions of the Governing Documents.

5.8 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 a non-Owner Occupant under a lease agreement if Owners fail to pay Assessments; (c) suspend voting rights; and (d) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.9 Reserve Fund. The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required by Utah law.

5.10 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 properly request pursuant to the Governing Documents or the law.

5.11 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.

5.12 Certificate of Payment Fees. The Association is specifically authorized to establish a fee to issue a written statement of unpaid Assessments in accordance with the Act (a "Certificate of Payment"). A Certificate of Payment shall be binding in favor of any person who relies in good faith upon the such Certificate of payment on other Owners, the Manager, and the Board. The Certificate of Payment fee shall be ten dollars (\$10.00), however, the Board may increase or decrease the fee amount if a new amount is identified in the Rules and is consistent with Utah law.

## ARTICLE 6 BUDGETS & ASSESSMENTS

6.1 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.

6.2 Budget and Regular Assessment.

- (a) The Board is authorized and required to adopt an annual budget. The Board may revise that budget from time to time as it deems appropriate.
- (b) The Association may use a calendar or fiscal year or may choose a different year. The budget shall estimate the total Common Expenses to be incurred for the next year, 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.

- (c) The Board 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.

6.3 Payment of Assessments. Subject to the Declarant exemption in Article 14 herein, unless otherwise established by the Board and communicated to each Owner, each Owner shall pay the Association the Owner's regular Assessment annually or on such installment basis as the Board may determine.

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

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

6.6 Rules Regarding Billing and Collection Procedures. The Board 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 Rules may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

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

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

- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
- (b) Any other charge designated by the Board as pertaining to the individual Unit 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.

6.9 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, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board in its discretion.

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

## ARTICLE 7

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

7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article. 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.

7.2 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. Thereafter, a 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 which remain unpaid after sixty

(60) days 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 a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.

7.3 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 Owner(s) 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 has any ownership interest in the Unit. An Owner is not liable for any Assessments accruing after they have lawfully transferred title of 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 is separate and distinct from any lien rights associated with the Unit.

7.4 Lien. The Association has a lien on each Unit for all Assessments, including 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 Lien. 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 the Act has expired and the Owner did not file an appeal, or (b) the Owner timely filed an appeal under the Act and the district court issued a final order upholding the fine. Association liens shall have priority over each lien and encumbrance on a Unit except for: (i) a lien or encumbrance recorded before the Initial Declaration was 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; or (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.

7.5 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).

7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Association appoints Melyssa D. Davidson as trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Association hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and the Act to Melyssa 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.

7.7 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.

7.8 Requiring Tenant to Pay Rent to Association. 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 as set forth in the Act.

7.9 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 attorneys' 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; and (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding. 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.

7.10 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 otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments or maintain the Unit.

## ARTICLE 8 GENERAL RIGHTS AND RESPONSIBILITIES OF OWNERS

8.1 Responsibilities of Owners. Owners shall have the rights and responsibilities set forth in this Article 8 in addition to any others set forth in the Governing Documents or provided by law.

8.2 Maintenance of the Unit. Except to the extent that maintenance, repair, and upkeep of Unit exteriors has been assigned to the Association, each Owner shall be responsible to maintain the Owner's Unit in an attractive, neat, clean, usable, safe, and sanitary condition, in accordance with the Community-Wide Standards.

8.3 Responsibility for Limited Common Area and Immediately Adjacent Common Area. In addition to the Unit, and except to the extent that maintenance and upkeep is assumed by Association, each Owner shall be responsible to maintain the Limited Common Area appurtenant to the Owner's Unit and Building and the Common Areas and Facilities immediately adjacent to the Owner's Unit, in neat and clean condition and free of all debris, grease, spills, leaks, trash,

litter, and personal property. Except to the extent that landscape maintenance is assumed by the Association, each Owner shall be responsible to maintain landscaping, if any, installed by the Owner (or predecessor in interest) or immediately adjacent to the Owner's Unit.

8.4 Common Walls. Each wall built as part of the original construction of a Unit erected on the boundary or dividing line between Units shall constitute a common wall. The cost of maintenance, repair or replacement of a common wall shall be shared by the Owners who make use of the wall in accordance to their proportional use thereof. Subject to the provisions of Article 11 governing insurance for attached Units, if a common wall is damaged, any Owner who has used the wall may restore it, and the other Owner or Owners of the common wall shall contribute to the cost in proportion to their interests, without prejudice, however, to the right of the restoring Owner to call for such larger contribution from the other Owners under Utah law regarding liability for negligence, or willful acts or omissions.

8.5 Prior Authorization from Board Required for Maintenance, Repair, and Alterations Affecting Unit Exterior or Building Integrity. Notwithstanding anything in this Declaration to the contrary, all maintenance, repairs and replacements affecting the Unit exterior, appearance of the Building in which the Unit is located, overall appearance of the Project, the integrity of any Building or other structure, any common wall, Common Areas and Facilities, and/or common element or system, shall require prior written approval of the Board to ensure quality of construction, integrity of the Building, common wall, and/or common element or system, and uniformity of appearance. No Owner shall allow his/her/their Unit, the Unit's Limited Common Area, or the immediately adjacent Common Area, to detract from the uniform appearance and design of the Project, or the health, safety, and use and enjoyment of the Association members.

8.6 Responsibility for Damage to Common Area and Facilities. An Owner shall be responsible for any damage to the Common Area and Facilities or to another Unit sustained as a result of or arising out of the Owner's modification of the Owner's Unit, subject to insurance provisions as required by law.

ARTICLE 9  
NON-EXCLUSIVE RIGHTS TO COMMON AREA AND FACILITIES  
AND EASEMENT RIGHTS

9.1 Nonexclusive Rights to Utilize Common Area and Facilities. Subject to all other Terms and Conditions of the Governing Documents, each Owner shall have the nonexclusive right to the use and enjoyment of the Common Area and Facilities. This non-exclusive right to the use and enjoyment 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 non-exclusive right to the use and enjoyment of the Common Area and Facilities as the Owner whose Unit the Occupant is occupying. An Owner's non-exclusive right to 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 Unit or guests who at any given time are permitted to use the Common Area and Facilities;
- (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 other area contained within the Project for purposes of providing governmental or municipal services;
- (c) The right and authority of the Board to adopt further Rules governing the use of the Common Areas and Facilities.

9.2 Easements and Access Rights Reserved to the Association. There is reserved to the Association nonexclusive easements with the right of access over, across, and through each Unit and the Common Area and Facilities and a right of entry for each Lot and to each Unit to make inspections, to prevent or mitigate damage to the 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 which are accessible from such Unit. The Association shall have the right to grant permissions, licenses, and easements upon, across, over, under, and through the Common Area and Facilities for purposes necessary for the proper operation of the Project.

9.3 Utility Easements. Easements and rights-of-way over, under and through the Project for the construction, installation, operation, maintenance, repair and/or replacement of utility lines, including, but not limited to, power, telephone, cable television, internet, water, gas, and sewer, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, the Units, or the Owners are hereby reserved to 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 the Units by the Owners or Occupants. 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 creating or conveying 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; provided, however, that no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.

9.4 Easements for Encroachments. If any portion of the Common Area and Facilities encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area as a result of the manner in which it was constructed or due to settling, shifting, alteration,

replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

9.5 No View Easements. 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 10 USE RESTRICTIONS AND CONDITIONS

10.1 Prohibition on 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 use and quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. Any violation of the Governing Documents may be deemed a nuisance under this Section. Any violation of any applicable law, statute, regulation, or ordinance by any Owner or Occupant may be deemed a nuisance under this Section. It shall be a nuisance under this Declaration for any Owner to permit or create an unreasonable level of sound to emanate from the Owner's Unit. Unless and until the Association changes this standard by adoption of a Rule, it shall be a nuisance to allow noise to emanate from a Unit after 10:00 pm and before 8:00 am.

10.2 Prohibition on Unsightliness. 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. Trash and recycling shall be properly and promptly disposed of.

10.3 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions. No 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 Unit shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project without the unanimous approval of the Board. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

10.4 Residential Use. Each Unit shall be used and occupied as a single-family dwelling. Unless otherwise approved by the Board, in writing, no trade or business may be conducted in or from a Unit unless:

- (a) the existence or the existence or operation of the business activity that is not apparent or detectable by sight, sound, or smell from any other Unit, or the Common Area;
- (b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;

- (c) the business activity does not involve solicitation of other Occupants or Owners of the Project;
- (d) 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 Board, in its sole discretion;
- (e) 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;
- (f) the business activity is disclosed to the Board 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;
- (g) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (h) 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
- (i) the Board's ongoing requests for information related to the business, as necessary to determine compliance with this paragraph, are responded to fully and completely.

10.5 Restrictions on Leasing. Every Unit may be leased for use and occupancy as a single-family dwelling, subject, however, to the following restrictions:

- (a) no Unit may be leased (whether or not for money) for any lease term of less than fourteen (14) days;
- (b) no Owner may lease less than all of the Unit (i.e., no lease of an individual room or rooms within a Unit); and
- (c) the Unit Owner shall be responsible to ensure the tenant's compliance with this Declaration and the Rules and shall be liable for any violations or damage by tenant.

## ARTICLE 11 INSURANCE

11.1 Insurance Requirement. The Association shall obtain property and liability insurance coverage as required in this Declaration and as required by the Act and shall include the cost of

such insurance as part of the Common Expense. The Association may obtain insurance that provides more or additional coverage than the insurance required by the Act. Different policies may be obtained from different insurance carriers, and stand-alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

11.2 Applicable Law. This Declaration is specifically subjecting the Association to the applicable insurance requirements and provisions of 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 Utah community associations be applicable to the Project.

## ARTICLE 12 AMENDMENT

12.1 General Amendment. Except as otherwise provided herein, this Declaration may be amended only by a recorded instrument approved by Owners holding Allocated Interests totaling not less than sixty-six percent (66%) of the votes of the Association. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.

12.2 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 12.1 shall be executed by the president of the Association and the secretary of the Association 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 with the Davis County Recorder.

## ARTICLE 13 INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

13.1 Conflicting Provisions. Except as otherwise provided herein, 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, this Declaration, the Plat, the Articles, the Bylaws, and then the Rules.

13.2 Interpretation of Declaration and Applicability of the Act. The Association 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.

- (a) Notwithstanding the foregoing and except with respect to the insurance provisions in Article 11 herein, the Project and the Association are specifically made subject to the

Act 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.

13.3 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.

13.4 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 of the Terms and Conditions, all of which shall remain in full force and effect.

13.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a condominium community and for the maintenance of the Project. 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.

13.6 Enforcement. The Association and 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.

13.7 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 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.

13.8 Security. The Association shall not, in any way, be considered an insurer, guarantor, or provider of security, or responsible to prevent or deter criminal conduct within or relating to the Project. The Association shall not 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 the Association has no 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 Association, nor the Board 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.

13.9 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 or Utah law, to accommodate an Owner or Occupant with a disability (as defined by law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to the Common Area and Facilities, or deviations from the 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.

13.10 No Representations or Warranties. **EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.**

#### ARTICLE 14 DECLARANT RIGHTS

14.1 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. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall nonetheless be subject to the terms in this Article.

14.2 Right to Appoint the Board of Directors During Declarant Control Period. The Declarant shall have the right to appoint and remove all members of the Board of Directors during the

Declarant Control Period. In the appointment of Board Members, the Declarant shall not be bound by any qualifications for Board Members in the Governing Documents. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Master Association otherwise) the powers of the Board of Directors pursuant to the rights granted in the Articles of Incorporation to the Declarant.

14.3 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 gets approval from any Owner of a Unit that has any boundary modified by the Plat.

14.4 Expansion of Project/Additional Land. The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason, consistent with this Declaration, as the same may be amended.

14.5 Right to Unilaterally Amend Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, including the Allocated Interests of the Units, any Supplement to the Declaration, the Bylaws, 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. Any amendment to this Declaration, Supplement to Declaration or the Bylaws shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer of the Declarant, with such signature acknowledged. 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.

14.6 Declarant Construction Easement. There is reserved to the Declarant, for itself, its affiliates and assignees, a temporary construction easement over, under, across, and through the Property and the Project, including, without limitation, the Units, Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any Project improvements including all physical improvements as well as the Units, Common Area and Limited Common Area. This construction easement further includes 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 construction, completion, maintenance, operation, or management of common elements; provided, however, that the Declaration or Association shall pay the actual cost of the utility service utilized pursuant to this Section.

Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that there will be construction activities, traffic, noises, odors and vibrations which may

temporarily disrupt the Owner's quiet enjoyment of the Unit until all improvements are complete, and waives any right to object to such construction activity; provided, however, the Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners.

The Declarant's construction activities pursuant to the easement granted hereunder shall not be considered a violation of any use restriction or Rules.

14.7 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article, shall not be substantively or procedurally altered without the written consent of the Declarant during the Declarant Control Period. Any document or amendment attempted during the Declarant Control Period without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declarant or any provision of Article 14, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 14 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.

14.8 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 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.

14.9 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and each Owner, by purchasing 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.

14.10 Declarant Exempt from Statutory Obligations. Pursuant to § 57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act and Article 14 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

ARTICLE 15  
CONFLICT AND LITIGATION AVOIDANCE



15.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform an inspection of the 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 who performs work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by acceptance of a deed or other instrument of conveyance) 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 the Unit for years, unfairly prejudicing the other Owner(s) who must sell or who want to sell their Unit during any period when litigation is pending. For this reason, each Owner, by acceptance of a deed or other instrument of conveyance, 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 Lot, that these warranties (from contractors and/or 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 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Project, 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. The provisions of this Article are in addition to the provisions of the Act governing the liability of the Declarant and/or the Board related to the Declarant Control Period.

15.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from contractors and/or 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 contractors and/or 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.

15.3 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.

#### 15.4 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein and 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 or 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 subcontractors 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 such rules and this Declaration.

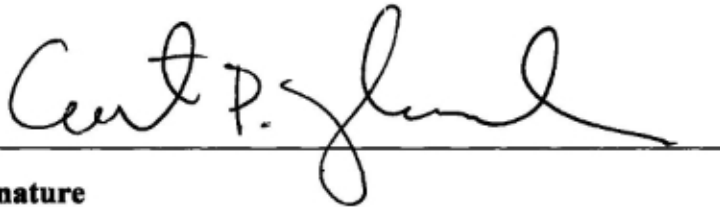
- (c) "Notice of Claim" shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the 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 an 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 Area 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) The provisions of this Article are in addition to the provisions governing the liability of the Declarant and Board Members during the Declarant Control Period in the Act.

*(Signature Page Follows)*

Dated this 31<sup>ST</sup> day of MARCH, 2021.

IVORY DEVELOPMENT, LLC

By: 

Signature

CHRISTOPHER P. GAMVROULAS

Printed

Its: PRESIDENT

STATE OF UTAH )

) ss.

COUNTY OF SALT LAKE )

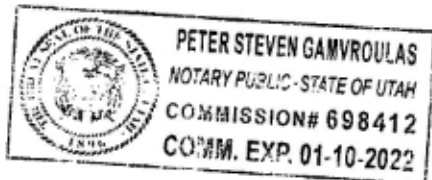
On this 31<sup>ST</sup> day of MARCH, 2021, personally appeared before me CHRISTOPHER P. GAMVROULAS, whose identity is personally known to me or proven on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the PRESIDENT, of IVORY DEVELOPMENT LLC

(Name of Document Signer)

(Title or Office)

(Name of Entity)

and that said document was signed by him/her with all necessary authority on behalf of the corporation.



  
Notary Public

**EXHIBIT A  
LEGAL DESCRIPTION**

The real property referred to in the foregoing instrument is located in Davis County, Utah and is described more particularly as follows:

TOWNS ON MAIN

**BOUNDARY DESCRIPTION**

THAT PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, BOUNTIFUL CITY, DAVIS COUNTY, UTAH AND DESCRIBED AS FOLLOWS:

COMMENCING AT A STREET MONUMENT FOUND AT THE INTERSECTION OF 1600 NORTH AND 400 EAST, THENCE S89°36'33"W 1823.18 FEET ALONG THE 1600 NORTH STREET CENTERLINE, THENCE S00°06'48"E 1241.52 FEET ALONG MAIN STREET CENTERLINE, THENCE S89°53'12"W 33.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MAIN STREET AND THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING S34°27'20"E 1538.56 FEET FROM A FOUND WITNESS MONUMENT WHICH LIES S00°18'47"E 288.35 FEET FROM THE CENTER OF SAID SECTION 18; AND RUNNING THENCE FROM SAID TRUE POINT OF BEGINNING ALONG SAID WESTERLY RIGHT OF WAY LINE S00°06'48"E 413.80 FEET; THENCE S89°53'12"W 101.00 FEET; THENCE N00°06'48"W 77.33 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, A DISTANCE OF 15.71 FEET, A CHORD DIRECTION OF N45°06'48"W AND A CHORD DISTANCE OF 14.14 FEET; N00°06'48"W 32.00 FEET; THENCE S89°53'12"W 34.00 FEET; THENCE N00°06'48"W 163.14 FEET; THENCE N89°53'12"E 34.00 FEET; THENCE N00°06'48"W 32.00 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, A DISTANCE OF 15.71 FEET, A CHORD DIRECTION OF N44°53'12"E AND A CHORD DISTANCE OF 14.14 FEET; THENCE N00°06'48"W 77.82 FEET TO THE SOUTHERLY BOUNDARY LINE OF BOUNTIFUL SHADOWS NO. 2 SUBDIVISION; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE S89°50'04"E 61.01 FEET; THENCE N00°06'48"W 12.00 FEET; THENCE S89°50'04"E 39.99 FEET TO SAID WESTERLY RIGHT OF WAY LINE AND THE POINT OF BEGINNING.

CONTAINS 1.12 ACRES OR 48,948.06 SQFT IN AREA

Parcel Numbers:

**EXHIBIT B**  
**BYLAWS**  
**TOWNS ON MAIN HOMEOWNERS ASSOCIATION**

These bylaws are hereby adopted and established as the Bylaws for the Towns on Main Homeowners Association, a Utah nonprofit corporation. These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and future Owners and Occupants of the Project.

ARTICLE I  
NAME AND PRINCIPAL OFFICE

1.1 Name. The name of the nonprofit corporation is Towns on Main Homeowners Association (the "Association").

1.2 Office. The principal office of the Association shall at all times be the then office of the registered agent of the Association on file with the Utah Division of Corporations.

ARTICLE II  
DEFINITIONS

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, and Restrictions for the Towns on Main (the "Declaration") shall have the same defined meanings when used in these Bylaws.

ARTICLE III  
MEMBERS

3.1 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 and time of the annual meeting shall be determined by the Board, in its discretion.
- (c) Purpose. The Annual Meeting shall be held for the following purposes:
  - (i) electing Board Members (after termination of the Declarant Control Period);
  - (ii) distributing the budget, if not distributed before the meeting;

- (iii) announcing any increases in deductibles for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussions on insurance issues and coverage; and
- (iv) transacting such other business as may properly come before the meeting.

### 3.2 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Board of Directors, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) 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.

3.3 Place of Meetings. The Board may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting.

3.4 Notice of Meetings. The Board shall cause written notice of the date, time, and place of meeting, 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.

3.5 Owners of Record. For the purposes of determining Owners entitled to notice of or vote at any meeting of the Owners, or any adjournment thereof, the Board 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.

3.6 Quorum. At any meeting of the members of the Association, the members appearing in person or by proxy shall constitute a quorum for the transaction of business.

3.7 Votes. All voting rights of the Association shall be exercised by the members according to the provisions of the Declaration. The affirmative vote of a majority of the votes entitled to be cast



by the members present, or represented by proxy, or by direct ballot, at a duly called meeting shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by these Bylaws, the Declaration, or Utah law. If title to a Unit is jointly held, any record owner thereof or its duly authorized representative may attend each meeting and act on behalf of such Unit.

3.8 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining the Members present shall be deemed waived if no objection thereto is made at the meeting.

3.9 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members that requires a stated percentage of the Project's undivided ownership interest may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by Unit Owners who collectively hold at least the stated percentage of such undivided ownership interests. Consents may be transmitted to the Association electronically.

3.10 Use of Electronic Ballots. The Board, in its discretion, may utilize email and other electronic means for voting by written ballot, with or without a meeting.

3.11 Telephone and Video Conferencing. The Board, in its discretion, may utilize telephone and/or video conferencing for any regular or special meeting of the Association to the fullest extent allowed by law, provided, however, that all individuals participating in such meeting may hear and communicate with each other in real time. An Owner participating in a meeting by telephone or video conferencing shall be deemed as present in person at the meeting.

#### ARTICLE IV BOARD OF DIRECTORS

4.1 Number, Tenure, Qualifications, and Election.

- (a) **Number of Members.** The Board of Directors shall be composed of three (3) individuals meeting the qualifications stated in the Declaration and Section 4.1(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 governance of the Association by the Declarant, Board Members must be Owners and current on all Assessments.
- (c) **Term.** Except during the Declarant Control Period, the term of each Board Member shall be two (2) years, provided, however, that one (1) Board Member of the initial Board elected by the Owners upon termination of the Declarant Control Period shall service a one (1) year term so as to create staggered terms going forward. The Board

Members on the initial Board elected by the Owners may determine among themselves who shall serve the one-year Board Member term.

4.2 Meetings. The Board shall hold at least one (1) regular meetings every year and any additional regular meeting as the Board, in its discretion, may determine.

4.3 Quorum and Manner of Acting. A majority of the Board shall constitute a quorum for the transaction of any business of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as a Board of Directors.

4.4 Place and Notice of Meeting. The Board may designate any place as the place of the meeting but shall attempt to hold the meeting at a place reasonably accessible by all Board Members. Board Members shall be given at least ten (10) days' notice of a Board meeting. Any Board Member may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member at any meeting of the Board shall be a waiver of notice by him/her/them of the time and place thereof unless an objection is stated before or at the beginning of the meeting.

4.5 Action by Board Members without a Meeting. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, is obtained from a majority the Board Members and no Board Member exercises his/her/their right to require a Board meeting. Such consent may be provided by electronic means. For the purposes of this Section 4.5:

- (a) "electronic means" shall mean electronic mail, email, letter, facsimile, text message, or other electronic document that is signed by the Board Member.
- (b) "signed" shall include any indication contained in the electronic mail 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 the electronic mail satisfies the requirement for a signature.

An action approved pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association and has the same effect as an action taken at a meeting of the Board. A Board Member may revoke consent to any action given pursuant to this section by communicating that the Member has changed his/her/their 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.

4.6 Compensation. No Board Member shall receive compensation for any services that he may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her/their duties as a Board Member to

the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Board Member (but must abstain from any vote respecting the performance of such services).

4.7 Meetings by Telephone and Video Conferencing. The Board, in its discretion, may utilize telephone and/or video conferencing for any regular or special meeting of the Board to the fullest extent allowed by law, provided, however, that all individuals participating in such meeting may hear and communicate with each other in real time. A Board Member participating in a regular or special Board meeting by telephone or video conferencing shall be deemed as present in person at the meeting.

4.8 Assignment of Board Responsibilities and Authority During Declarant Control Period. During the Declarant Control Period, all of the rights and responsibilities of the Board of Directors are assigned to Christopher Gamvroulas or to such other assignee as may be designated by the Declarant in writing.

#### ARTICLE V OFFICERS

5.1 Officers. The officers of the Association shall be a president (the "President"), a vice-president (the "Vice-President"), and a secretary/treasurer ("Secretary/Treasurer").

5.2 Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board Members annually at a meeting of the Board. Each officer shall hold his/her/their position for one (1) year.

5.3 Other Officers. The Board of Directors 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 Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. No subordinate officer or agent need be a Board Member.

5.4 President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The President shall sign on behalf of the Association all Membership certificates, conveyances, mortgages and contracts and shall do and perform all acts and things which the Board may require. The President shall conduct meetings of the Association and meetings of the Board, unless such responsibility is delegated to another officer or the Manager.

5.5 The Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge

such other duties as may be required of him/her/them, or shall be delegated to him/her/them, by the Board.

5.6 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Directors may require him/her/them to keep and shall perform such other duties, or be delegated such duties, as the Board may require.

5.7 Compensation. No officer shall receive compensation for any services that he/she/they may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in the performance of his/her/their duties as an officer to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his/her/their capacity as an officer.

## ARTICLE VI INDEMNIFICATION

6.1 Indemnification. Each Board Member and Officer now or hereafter serving as such, shall be indemnified by the Association against any and all claims and liabilities to which he/she/they has/have or shall become subject by reason of serving or having served as such Board Member or Officer, or by reason of any action alleged to have been taken, omitted, or neglected by him/her/them as such Board Member or Officer; and the Association shall reimburse each such individual for all legal expenses reasonably incurred by him/her/them in connection with any such claim or liability, provided, however, that no such individual shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence or criminal activities.

6.2 Determination of Indemnifiable Amount. The amount paid to any Officer or Board Member by way of indemnification shall not exceed the actual, reasonable, and necessary expenses incurred in connection with the matter involved, and such additional amount as may be fixed by a committee of not less than three (3) nor more than five (5) individuals selected by the Board of Directors who shall be Owners but not Board Members, Officers or related to Board Members or Officers, and any determination so made shall be binding on the indemnified Officer or Board Member.

6.3 State Law. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Officer or Board Member of the Association may otherwise be entitled by then applicable Utah law.

## ARTICLE VII FISCAL YEAR

7.1 Fiscal Year. Unless otherwise determined by the Board, the fiscal year (“Fiscal Year”) of the Association shall begin on January 1 of each year and shall end on December 31 of the same year.

## ARTICLE VIII RULES AND REGULATIONS

8.1 Rules and Regulations. The Board of Directors may by resolution from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and enjoyment of the Project, and enforcement and collection, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Declaration or in these Bylaws. Each Member shall be provided with copies of all rules and regulations adopted by the Board of Directors, as well as copies of all amendments and revisions thereof.

## ARTICLE IX NOTICE

9.1 Notice. Any notice required to be given under these Bylaws, the Declaration, or Utah law may be sent via first-class U.S. mail, electronic mail or text message to the mailing address, email address, or phone number provided by each Owner or that an Owner uses to communicate with another Owner or the Association.

## ARTICLE X AMENDMENTS AND CONFLICTS

10.1 Amendments. Except as otherwise provided by law, by the Declaration or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the Members upon the written action or vote (with or without a meeting) of a majority of the total votes of the Association. Nevertheless, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause, if higher. No amendment shall be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total votes of the Association, shall have been executed and verified by the current President and Secretary and recorded in the official records of the Association and in the recorder’s office of Davis County, Utah.

10.2 Conflicts with Law. In the event of any conflict between the provisions of these Bylaws and the Utah Revised Nonprofit Corporation Act or the Act, the provisions of the Act or the Utah Revised Nonprofit Corporation Act, as the case may be, shall control.