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DECLARATION

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OF 

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR THE

STONE HOUSE BEND SUBDIVISION

(A.K.A ORCHARD RIDGE ESTATES, PHASE 4)

August 2024

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
STONE HOUSE BEND SUBDIVISION
(A.K.A ORCHARD RIDGE ESTATES, PHASE 4)

This Declaration of Covenants, Conditions and Restrictions for the Stone House Bend Subdivision (“Declaration”) is made and executed by Compass Holdings Development, LLC, a Utah limited company (“Declarant”). The Stone House Bend Subdivision is also known as the Phase 4 of the Orchard Ridge Estates Subdivision, and those names will be used interchangeably throughout this Declaration.

RECITALS:

A. Name of Project and Description of Land. The subdivision that is the subject of this Declaration shall be known as Stone House Bend Subdivision (“Project”), and is situated in and upon that certain real property (“Subject Land”) located in Davis County, State of Utah, as specifically described in Exhibit “A” attached hereto and incorporated herein by this reference. Declarant has prepared and has recorded or will record in the office of the County Recorder for Davis County, State of Utah, a plat map for Phase 4 of the Orchard Ridge Estates Subdivision (“Plat”). There will be thirteen (13) Lots in the Project, including Lots 401 through 413, as shown on the Plat.

B. Name of Association and Bylaws. The name of the Association shall be the Stone House Bend Homeowner’s Association (“Association”), which has been created as a Utah nonprofit corporation by filing articles of incorporation with the Utah Division of Corporations and Commercial Code. The Association is the governing body of the Project and is to be operated in accordance with this Declaration, the Articles of Incorporation for Stone House Bend Homeowner’s Association, and the Bylaws of Stone House Bend Homeowner’s Association. The Bylaws are attached hereto as Exhibit “B”.

C. Intent and Purpose. Declarant, by recording this Declaration, does so for the purpose of: (1) creating a residential development with common areas including permanent open spaces, streets, landscaping, and other related areas and facilities for the common use and enjoyment of the Owners of the Lots; and (2) to impose upon the Subject Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots within the Project and the Owners thereof.

ARTICLE I DEFINITIONS

- 1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.
- 1.2 **Association** shall mean Stone House Bend Homeowner's Association, a Utah nonprofit corporation, organized to serve and act as the governing body of the Project.
- 1.3 **Board of Directors** or **Board** shall mean the Board of Directors of the Association.
- 1.4 **Common Areas** or **Common Areas and Facilities** shall mean all of the Subject Land, except all Lots, including without limiting the generality of the foregoing, that portion of Stone House Bend that is labeled as a "private street" on the Plat, together with all equipment, facilities, fixtures, and other personal property and real property improvements located in the Common Area and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, all of the following located in the Common Area: streets, curb and gutter improvements that are owned by the Association, bushes and other landscaping, and all other personal property and real property improvements hereafter added in accordance with this Declaration. In addition to the foregoing, if Declarant deeds Parcel B, as shown on the Plat, to the Association, then it shall be part of the Common Area. Each Owner shall have that ownership interest in the Common Areas of the Association listed on the attached Exhibit "C". All Common Areas shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Declaration.
- 1.5 **Common Expense** shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including any special assessments), and including those fees not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, accountants, bookkeepers, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefitting the Common Area, and all recreational facilities thereon; the costs of any fire, casualty or liability insurance covering the Project; and the cost of bonding the Association board members and officers; any taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Project, or portion thereof; and the cost of any other expense incurred by the Association for any reason whatsoever in connection with the Project, for the benefit of all of the Owners.
- 1.6 **Common Expense Fund** shall mean the fund created or to be created and into which all funds of the Association shall be deposited and used to pay common expenses.

- 1.7 **Declarant** shall mean Compass Holdings Development, LLC, a Utah limited company, its assigns or its successor in interest that develops and improves the Common Area or that purchases substantially all the Lots from Compass Holdings Development, LLC.
- 1.8 **Design Committee** shall mean the committee created pursuant to Article 5 of this Declaration.
- 1.9 **Dwelling** shall mean and refer to each physically constructed residential dwelling or building containing a single family residence located as an improvement on a Lot.
- 1.10 **Lot** shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 1.11 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.12 **Member** shall mean a member of the Association and shall include all Owners.
- 1.13 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.14 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any deed of trust, or (ii) any successor to the interest of such person under such Mortgage.
- 1.15 **Owner** shall mean any person or entity or combination thereof, including the Declarant, owning fee title to a Lot within the Project as shown on the records of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed.
- 1.16 **Period of Administrative Control** shall end on the earlier to occur of the following: (a) seven (7) years from the date of recordation of this Declaration, (b) the date on which one-hundred percent (100%) of the Lots in the Project have been conveyed to Owners other than Declarant or Declarant's successor in interest, or (c) the date on which the Declarant provides written notice to all Lot Owners that it is terminating the Period of Administrative Control.
- 1.17 **Plat** or **Map** shall mean the Plat for Orchard Ridge Estates, Phase 4, as recorded in the office of the County Recorder for Davis County, State of Utah, on _____, as Entry No. _____, in Book _____, at Pages _____.
- 1.18 **Project** shall mean the Stone House Bend Subdivision (a.k.a. Orchard Ridge Estates, Phase 4) and all Lots and all Common Areas included therein.
- 1.19 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit "A".

- 1.20 **Total Votes of the Association** shall mean the total number of votes appertaining to the Lots in the Project, as shown on Exhibit "C" attached hereto.

ARTICLE II DIVISION OF PROJECT

- 2.1 **Submission to Declaration.** All of the Subject Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a residential subdivision to be known as Stone House Bend Subdivision. All of said Subject Land is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Plat, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Lot Owners, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.
- 2.2 **Subdivision into Lots.** Pursuant to the Plat, the Subject Land is divided into Lots as more particularly described on the Plat. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use the Common Areas.
- 2.3 **Not a Cooperative or Condominium.** The creation of the Stone House Bend Subdivision shall not constitute the creation of a cooperative and no portion of the Project shall contain any condominiums.

ARTICLE III IMPROVEMENTS

- 3.1 **Description of Improvements.** The Project shall be constructed in one phase containing thirteen (13) Lots, as shown on the Plat. Each of the Lots shall, when improved, contain one single family dwelling.
- 3.2 **Description and Legal Status of Lots.** The Plat shows the number of each Lot located in Phase 4 of the Orchard Ridge Estates Subdivision. All Lots shall be capable of being independently owned, encumbered, and conveyed.
- 3.3 **Contents of Exhibit "C".** Exhibit "C" to this Declaration furnishes the following information with respect to each Lot: (a) the Lot number, (b) the number of votes appertaining to each Lot by the Owner as a Member of the Association, and (c) the percentage interest each Owner owns in the Common Area.

ARTICLE IV NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Ownership and Maintenance of Lots.** The maintenance, replacement and repair of the common areas and facilities shall be the responsibility of the Association as directed by the Board and the cost thereof shall be a Common Expense. The Lot Owners shall repair and maintain all portions of their Lot and the Dwelling thereon. The Lot Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Lot Owner's expense, all portions of the Owner's Lot and Dwelling.
- 4.2 **Landscape Installation.** Within one year of occupancy of Dwelling, the front and side yards of the Lot upon which the Dwelling is constructed shall be planted in lawn or other acceptable landscaping so as not to negatively impact the aesthetics of the subdivision. "Acceptable landscaping" and "lawn" shall be interpreted by the then existing Design Committee which will reflect the majority view of the then-existing homeowners in the subdivision. Trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the property owner's expense upon request of the Design Committee.
- 4.3 **Title.** Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 4.4 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the Owner's Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.5 **Ownership and Use of Common Areas.** The Association shall own the Common Areas and the Association shall have the exclusive right and obligation to manage and maintain all Common Areas, and to repair, replace and reconstruct any existing or new Common Areas. Each Owner shall have an irrevocable license and easement to use, occupy and enjoy all Common Areas in common with all other Owners. Except as otherwise provided in this Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Each Owner will be responsible for a share of the insurance, maintenance and other costs and expenses relating to the Common Areas in proportion to the percentages listed on the attached Exhibit "C".
- 4.6 **Exclusive Use of Lot.** All Lots are reserved for the exclusive use of the Owner of that Lot, and such Owner's invitees and guests and such areas shall be maintained and repaired at the expense of the Lot Owner.
- 4.7 **Architectural Control.** No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Design Committee as to quality of workmanship and materials, harmony of exterior appearance with existing structures and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered

on any lot nearer to any street than the front building setback line unless similarly approved. The approval process is set forth in Article 5.

4.8 **Building Size and Construction.** All Dwellings on the Property shall comply with the following requirements:

- (a) No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed 35 feet in height (as measured from the front street elevation) and a second garage which may be detached. Any detached garage shall be compatible in design, architecture and materials to the Dwelling and must be approved by the Design Committee before construction begins.
- (b) All Dwellings shall have a concrete or asphalt paved driveway (or other hard surface approved by the Design Committee) from the garage to the street allowing safe ingress and egress.
- (c) A Lot Owner must begin construction of a Dwelling on their Lot within one year of purchasing the Lot from Declarant. No structure of any kind shall be moved upon any Lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of two years from the date the building was started unless approved by the Design Committee.
- (d) Notwithstanding the restrictions contained in subparagraph (c) above, the Declarant shall have the right to grant an extension allowing a Lot Owner to wait more than one year after purchasing a Lot to begin construction of a Dwelling. The length of any such extension shall be determined solely by the Declarant and shall not be subject to challenge by the Board or any Owner. Any such extension must be documented in writing. Additionally, the Owner of a Lot that receives an extension shall be required to revegetate the Lot with wildflowers and grasses for erosion control purposes within one year after purchasing such Lot.
- (e) The ground floor square footage area of the main structure, exclusive of garage and any one-story open porches, with or without a basement, shall not be less than 2,200 square feet for a one-story dwelling.
- (f) In a two-story home, which is two stories above the curb level, with or without a basement, the combined area of the ground story level and the story above ground-story level, exclusive of garage and any one-story open porches, shall total not less than 3,000 square feet.
- (g) Building Exteriors.
 - (i) No building shall be erected or placed on any Lot having an exterior building surface of less than 30% brick or stone. The remaining exterior surface shall be of bordered stucco, Concrete Board, Hardie Board or the equivalent as

approved by the Design Committee. Exterior wood siding may be used with special permission from the Design Committee.

- (ii) All exterior materials must be approved by the Design Committee prior to commencement of construction.
- (iii) Aluminum or vinyl shall be allowed in soffit and fascia areas, and in other areas as approved by the Design Committee.
- (iv) Roofing materials shall be cedar shake, tile, or architectural grade asphalt shingle (25-30-year type), or as approved by the Design Committee.
- (h) All dwellings shall be built on site. No prefabricated or manufactured homes shall be permitted.
- (i) No retaining walls shall be constructed anywhere on a Lot unless the Lot Owner has first received written approval from the Design Committee. Before it approves a retaining wall, the Design Committee may require an owner to provide verification regarding any safety and drainage issues that might be related to the retaining wall.
- (j) The purpose of these covenants is to (a) assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded, and (b) assure that no safety or water/draining issues by any construction or landscaping activities. The minimum square footage cited in this paragraph can be waived if prior written approval of the Design Committee is obtained and the Lot size and topography justifies the waiver, and all other covenants contained in this declaration are met.
- (k) The Design Committee reserves the right to be "subjective" in approving or disapproving the construction of any home to be built in the subdivision in order to enhance and protect the value, desirability, and attractiveness of the Lots. It is contemplated by this declaration, and agreed to by all Lot owners, that there will be variations and adjustments made by the Design Committee in approving or disapproving building plans. The process of approval by the Design Committee will be subjective, but not arbitrary, in approving building plans in substantial conformity with these Protective Covenants.

4.9 **Garage Requirement.** Each Dwelling shall have, at a minimum, a three car attached garage.

4.10 **Building Location.**

- (a) Any dwelling or improvements erected or placed on the Lot shall be situated within the side yard, set back and rear Lot line as required by city ordinances.

- (b) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of any building on a Lot to encroach upon another Lot.

4.11 **Common Area Landscaping.** All Common Area landscaping, if any, shall be maintained, cleaned, repaired and reconstructed by the Association and shall be re-landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and consent of the Board of Directors of the Association, and in accordance with the provisions of this Declaration. Without limiting the generality of the foregoing, the Association shall:

- (a) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all Common Areas;
- (b) remove all snow within a reasonable time following a snowfall from the private streets within the Project.
- (c) re-landscape, re-construct and repair all Common Areas at such time as the same are in a state of disrepair and require replacement.

The Association shall not be obligated to remove snow from any driveways on the Lots.

4.12 **Fences and Walls.** All Fences except for those listed below shall be maintained, repaired and replaced by the Owner of the Lot on which the fence is located. If a fence divides multiple Lots, the fence shall be maintained, repaired and replaced as a shared expense between the Owners whose Lots are divided by the fence. Lot Owners may build a fence on their Lot. Unless otherwise approved by the Design Committee, only rod iron fences shall be permitted in the Project.

4.13 **Inseparability.** Title to any part of a Lot within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be constructed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Areas in common with all Owners.

4.14 **No Partition.** The Common Areas shall be owned by the Association, in accordance with the provisions of this Declaration, and no Owner nor the Association may bring any action for partition thereof except as allowed by law.

4.15 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber the Owner's Lot. No Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Areas and Common Facilities or any part thereof. Any mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, and in the event of

foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

- 4.16 **No Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Areas shall be taxed in accordance with the ownership interest possessed by each Lot Owner.
- 4.17 **Mechanic's Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or the Owner's agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same.
- 4.18 **Description of Lot.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of LOT NO. _____ contained within Phase 4 of the Orchard Ridge Estates Subdivision as the same is identified in the subdivision plat recorded in the Office of the Recorder of Davis County, Utah as Entry No. _____, in Book _____, at Page _____ (as said subdivision plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for the Stone House Bend Subdivision, recorded in the Office of the Recorder of Davis County, Utah as Entry No. _____, in Book _____, at Page _____, (as said Declaration may have heretofore been amended or supplemented).

Regardless of whether or not the description employed in any such instrument is in the above specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor the right of non-exclusive use of Common Areas shall be separated from the Lot to which it appertains; and even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use of Common Areas shall automatically accompany the transfer of the Lot to which they relate.

- 4.19 **Non-Exclusive Easements.** A non-exclusive easement is granted over and across all streets within the Project for use of Declarant, the Owners, their guests, occupants, lessees, and invitees.
- 4.20 **Mortgages and Liens on Common Areas.** The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Areas or any part thereof. No labor performed or material furnished for use in connection with the Common Areas shall create any right to file a statement, claim, or notice of mechanic's lien against the Common Areas.

- 4.21 **Seasonal Runoff Ditch:** A Seasonal Runoff Ditch will be established on the property designated as "Parcel B" on the Plat. The Declarant may (a) transfer Parcel B to the Association, (b) incorporate Parcel B into Lot 413, or (c) transfer Parcel B to the owner of Lot 413. If Parcel B is transferred to the Association, it will be responsible for all maintenance and repair of Parcel B, including the Seasonal Runoff Ditch. If Parcel B is incorporated into Lot 413 or transferred to its owner, the owner of Lot 413 will be responsible for its maintenance and repair, including the Seasonal Runoff Ditch. No Owner shall relocate, damage, or interfere with the Seasonal Runoff Ditch without the Board's prior written consent.

ARTICLE V DESIGN COMMITTEE

- 5.1 **Organization of the Design Committee.** There shall be a Design Committee consisting of not fewer than two (2) members. The members of the Design Committee need not be Owners. Members of the Board may also serve as members of the Design Committee. During the Period of Administrative Control, Declarant shall have the right to appoint and remove all members of the Board and of the Design Committee. Declarant may voluntarily relinquish control of the Design Committee to the Board at any time. After the Period of Administrative Control, the Board shall have the right to appoint and remove all members of the Design Committee. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least two (2) members. Unless authorized by the Board, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function. If no Design Committee members have been appointed, then the Board shall act as the Design Committee.
- 5.2 **Actions Requiring Approval.** No fence, wall, Dwelling, accessory or addition to a Dwelling, or landscaping or other improvement of a Lot shall be constructed or performed, nor shall any alteration of any structure on any Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.
- 5.3 **Standard of Design Review.** Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.
- 5.4 **Design Committee Rules and Architectural Standards.** The Board may, upon recommendation from the Design Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing

of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

- 5.5 **Approval Procedure.** The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.
- 5.6 **Variance Procedure.** If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be denied.
- 5.7 **Non-waiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.
- 5.8 **Completion of Construction.** Once begun, any improvements, construction, landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.
- 5.9 **Exemption of Declarant.** The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Lot or portions of the Common Areas or expanded portions of the Project at any time Declarant is the owner of a Lot. One of the purposes for exempting Declarant from the provisions of this Article is to permit Declarant the flexibility to adjust architectural styles and schemes in the event the Declarant determines that changes are needed to reflect changes in building standards and techniques and architectural styles.
- 5.10 **Estoppel Certificate.** Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so

comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

- 5.11 **Disclaimer of Liability.** Neither the Declarant, the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

ARTICLE VI EASEMENTS

- 6.1 **Easement for Maintenance.** The Association shall have the irrevocable right to have access from time to time to all Common Areas and to all areas maintained by the Association during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas.
- 6.2 **Right to Ingress and Egress.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.
- 6.3 **Easement for Completion of Project.** Declarant shall have a transferable easement over and across the Common Areas for the purpose of completing construction of the Project and improvements therein, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith.
- 6.4 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 6.5 **Easements Reserved by Declarant and Association.** The Association shall have power, without the vote or consent of the Owners or of any other person, to grant and convey to any third party easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Common Areas, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project.

- 6.6 **Utility Easement.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE VII RESTRICTIONS ON USE

- 7.1 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot or Dwelling shall be used for business or commercial activity except that an Owner may operate an office or business out of their Dwelling provided that no business activity involving clients coming to the home on a regular basis (more than once a day) may take place nor shall the deliveries to the Dwelling more than twice per day.
- Nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lots owned by Declarant or any part of the Common Areas as sales models or property management offices, or (b) any Owner or the Owner's duly authorized agent from freely renting or leasing the Owner's Lot from time to time.
- 7.2 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Design Committee will be permitted on patios or in other open areas, unless the patio or area is enclosed and designed for such purpose. All roof mounted heating and cooling equipment must be set back to the back side of the roof out of view from the street. All TV antennas are to be placed in the attic out of view. Satellite dishes should be hidden from view from the street.
- 7.3 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence either temporarily or permanently.
- 7.4 **Signs.** No sign of any kind shall be displayed to the public view on any lot except signs used by a builder to advertise the property during the construction and sales period, or signs used by a property owner advertising the property for sale.
- 7.5 **Pets and Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in violation of applicable city ordinances. No animals may be kept, bred, or maintained on any Lot for any commercial purpose, and are restricted to the owner's premises or on leash under handler's control.

- 7.6 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, or inoperable vehicles shall be parked or stored on the driveway or in any area in front of any Dwelling for more than 72 hours in any 30 day period. If such vehicles are stored on a Lot, they shall be stored in a garage or behind a fence so as not to be visible from the street. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof shall be dismantled, rebuilt, serviced, repaired or repainted on or in the driveway of a Lot or in front of any Dwelling or Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots.
- 7.7 **Vehicles.** No vehicles of any kind, including, but not limited to, passenger automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, snowmobile trailers, mobile homes, two and three wheel motor vehicles (hereinafter collectively referred to as "vehicles"), are to be parked or stored in the front or side street of the Lots, with the exception that passenger automobiles and light duty trucks may be parked in the front or side street provided they are in running condition, properly licensed, being regularly used, and are moved at least every 48 hours. With the exception of passenger automobiles and light duty trucks, all vehicles must be stored in an enclosed garage. All vehicles that are inoperable shall not be permitted to accumulate upon any street or Lot. No vehicle shall be dismantled, rebuilt, serviced, or repaired on or in front of any Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the site and sound of such activity from the public streets and neighboring Lots.
- 7.8 **No Obstructions.** There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association
- 7.9 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association, nothing shall be done or kept in or on any Lot, in the Common Areas, or in any other part of the Project which may result in cancellation or any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot or Dwelling which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or Dwelling or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, the Owner's guests, lessees, licensees, or invitees.
- 7.10 **Rules and Regulations.** The Owners shall comply with all of the rules and regulations governing use of the Common Areas, as such rules and regulations may from time to time be adopted, amended, or revised by the Board of Directors.

- 7.11 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 7.12 **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of trash, weeds and other refuse by the Lot Owner. No unsightly materials or other objects are to be stored on any Lot in view of the general public.
- 7.13 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or gas shall be erected, maintained, or permitted upon any lot.
- 7.14 **Slope and Drainage Control.** No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels, including without limitation, the draining on the retaining walls on the lots of the west side of Phase 4 (the "West Retaining Wall"). The slope control areas of each Lot and all improvements in them shall be maintained continuously by the owner of the Lot, including the West Retaining Wall, except for those improvements for which a public authority or utility company is responsible.
- 7.15 **Damage.** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the purchaser or owner and/or their agents or builder of any particular lot in this subdivision must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the purchaser or Owner.
- 7.16 **Trail Access.** A private, city-owned road adjacent to the Project leads to the Bonneville Shoreline Trail (the "Access Road"). No vehicles shall be parked in front of or block the Access Road at any time. While Kaysville City may permit Owners to use the Access Road for pedestrian and bicycle access to the Bonneville Shoreline Trail, neither Owners nor their guests are permitted to use motorized vehicles on the Access Road at any time.

ARTICLE VIII RENTAL RESTRICTIONS

8.1 **Leasing Prohibited.** The leasing of a Lot within the Project is prohibited unless the Lot Owner qualifies for one of the exceptions listed in Section 8.2 below. No short term (less than twelve consecutive months), weekly, weekend, or overnight rentals, shall ever be permitted.

8.2 **Restrictions Not Applicable.** The restrictions contained herein shall not apply:

- (a) To a Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Lot during the period of temporary military deployment. The Owner who is temporarily deployed may lease their Lot during the period of temporary military deployment. However, if the Owner moves from the Lot due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Lot and Owner, and the exemption herein shall terminate;
- (b) To a parent, grandparent, or child who is an Owner and leases their Lot to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
- (c) To an Owner who moves at least 30 miles away from the Lot by reason of being relocated by the Lot Owner's employer, if relocation of the Owner is scheduled by the employer for a period of less than two years;
- (d) To an Owner who moves at least 30 miles away from their Lot due to temporary (less than three years) humanitarian, religious or charitable activity or service and leases their Lot with the intent to return to occupy the Lot when the humanitarian, religious or charitable service has concluded;
- (e) To a Lot owned by an entity that is occupied by an individual who: (i) has voting rights under the entity's organizing documents; and (ii) has a 25% or greater share of ownership, control, and right to profits and losses in the entity; or
- (f) To a Lot owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current Resident of the Lot or the parents, grandparent, child, grandchild, or sibling of the current Resident of the Lot.

8.3 **Renting Defined.** As used herein, "Renting" or "Leasing" means a Lot that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Lot as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is Leasing a Lot. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Lot is being rented or leased.

8.4 **Non-Owner Defined.** As used herein, "Non-Owner" means an individual or entity that is not an Owner as reflected on the official records of the Davis County Recorder.

- 8.5 **Occupied Defined.** As used herein, "Occupied" means to reside in the Lot for ten (10) or more days in any thirty (30) day period. A Lot is deemed to be Occupied by a Non-Owner if the Lot is Occupied by someone other than the Lot Owner.
- 8.6 **General.** The provisions of this Declaration, the Articles of Incorporation, Bylaws and the rules and regulations shall apply with equal force to renters or lessees of any Lot. Any Owner who rents or leases the Owner's Lot shall be responsible for the conduct of the Owner's tenants, and upon written notice from the Board, the Owner shall be responsible for correcting violations of the Declaration, Articles of Incorporation, Bylaws, or Association rules committed by such tenants. The power of the Board hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting or leasing his or her Lot shall be deemed to have consented to these procedures and shall indemnify and save harmless the Board against any and all liability therefor. It is expressly understood that the remedies available to the Board shall include but not be limited to the right to seek eviction of the tenant.
- 8.7 **Violation.** Any Lot Owner who violates the provisions of this Declaration in any manner shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the lease in violation of this Declaration. If the Association retains legal counsel to enforce this Declaration, with or without the filing of legal process, the violating Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board in enforcing this Declaration.

ARTICLE IX THE ASSOCIATION

- 9.1 **Membership.** Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. An Owner shall be entitled to one membership for each Lot owned by said Owner. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. Except as described in Section 9.2 below, no person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.
- 9.2 **Voting Rights.** The Association shall have the following described two (2) classes of voting membership:

- (a) **Class A.** Class A Members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A Members shall be entitled to vote the percentage interest in the Common Area as provided in the attached Exhibit "C".
 - (b) **Class B.** The Class B Member shall be in the Declarant and its assigns or successors, and shall consist of the interest the Declarant has in the existing Lots. For voting purposes the Class B Member shall be entitled to five (5) votes for each Lot as stated in the attached Exhibit "C" for each Lot owned by Declarant. The Class B Membership shall automatically cease and be converted to a Class A Membership on the first to occur of the following events:
 - (i) When the total number of votes held by all Class A Members exceeds the total number of votes held by the Class B Member.
 - (ii) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.
- 9.3 **Board of Directors.** The Board of Directors shall consist of three (3) members. Declarant reserves the right to appoint all of the Board of Directors until the first of the following the end of the Period of Administrative Control.
- 9.4 **Amplification.** The provisions of this Article IX may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.
- 9.5 **Liability of Board.** The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful and gross: misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability, officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

ARTICLE X

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

- 10.1 **The Common Areas.** The Association shall be responsible, as described herein and subject to the rights and duties of the Owners as set forth in this Declaration, for the exclusive management and control of the Common Areas and all improvements thereon. In particular, the Association shall be responsible for maintenance of the private roads and associated improvements located in the Project. Except as otherwise provided for in this Declaration, the Association shall also be responsible for maintenance, repair, and replacement of all improvements or other materials located upon or used in connection with the Common Areas. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.
- 10.2 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund. Any agreement appointing a Managing Agent shall be terminable by the Board with or without cause upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one (1) year renewable, by agreement of the parties for successive one (1) year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.
- 10.3 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter. In addition to the foregoing, the Association may acquire and pay for as a Common Expense, insurance, landscaping, snow removal, some exterior lighting, and other necessary or desirable utility services for the Common Areas and other goods and services common to the Lots.
- 10.4 **Real and Personal Property.** The Association may acquire, hold and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. The Lot Owners shall own an undivided interest in all the Common Areas. The maintenance, repair and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.
- 10.5 **Rules and Regulations.** The Association by action of its Board of Directors may make reasonable rules and regulations governing the use of the Lots and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising

hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Association is empowered to adopt rules allowing for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8a-310 (as amended), and to adopt rules allowing the Association to assess a fine against those residents, Owners or tenants who violate the Association's Declaration, bylaws or rules and regulations, which rules shall be consistent with those permitted in Utah Code Annotated § 57-8a-208 (as amended). In the event of such action, with or without the filing of a judicial action, the Association shall be entitled to recover its costs, including reasonable attorney fees, from the offending Owner. During the Period of Administrative Control the Declarant is exempt from Association rules and rule making procedures.

- 10.6 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 10.7 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.
- 10.8 **Reserves.** Following the Period of Administrative Control, the Association shall maintain an adequate reserve fund for maintenance, repair and replacement of those Common Areas that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article XI below.

ARTICLE XI ASSESSMENTS

- 11.1 **Agreement to Pay Assessments.** Declarant, for and as the owner of the Project and every part thereof on the date hereof, hereby covenants in behalf of each Lot Owner, and each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article XI.
- 11.2 **Date of Assessment.** All monthly and special assessments authorized by this Article XI shall begin as to each Lot Owner on the date the Owner receives title to a Lot from the Declarant or from the previously Lot Owner.

- 11.3 **Uniform Assessments.** Common Area assessments shall be computed and assessed against all Lots in a percentage equal to the percentage of undivided interest owned by each Owner in the Project, as shown on the attached Exhibit "C".
- 11.4 **Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to a Lot as of the date a Lot is conveyed from the Declarant to an Owner. Assessments are due on the first day of each month. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.
- 11.5 **Annual Budget.** Annually, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners annually. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.
- 11.6 **Basis of Annual Budget.** The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Common Expenses") arising out of or connected with maintenance and operation of the Common Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve and reserve fund required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.
- 11.7 **Annual Assessments.** The Association shall establish a regular monthly assessment against each Owner, which assessment shall be apportioned among and assessed to all Owners in the percentages listed in the attached Exhibit "C", and which shall be paid by each Owner into a Common Expense fund ("Common Expense Fund"). The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Lot shall be apportioned and assessed to all Owners in the percentages listed on the attached Exhibit "C". Each monthly installment of the regular assessment not timely paid by the 5th day of the month shall bear interest at the rate of one and one-half percent (1½ %) per month from the date it becomes due and payable until paid, as well as a late fee in an amount established by the Board, not to exceed \$100.00 per month. Failure of the Association to give timely notice of any

assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

- 11.8 **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments as needed. No vote of the Owners shall be required to approve an assessment needed to repair or maintain portions of the Common Area that the Association is responsible to repair and maintain. Any amounts assessed pursuant hereto shall be apportioned among and assessed to all Lots in the percentages listed in the attached Exhibit "C". Notice in writing of the amount of such assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any assessment shall bear interest at the rate of one and one-half percent (1½ %) per month from the date such portions become due until paid plus late fees as established by the Board not to exceed \$100.00 per month.
- 11.9 **Declarant's Obligations.** Notwithstanding the preceding provisions of this Article XI to the contrary, Declarant shall not be obligated to pay any Common Area assessment or any other assessment to the Association. The Common Area assessment will be assessed when the Lot has been conveyed from Declarant to a Lot Owner.
- 11.10 **Lien for Assessments.** All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article XI, together with interest thereon as provided herein, is secured by virtue of this Declaration as a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Declaration, the Association may prepare a written notice of lien in conformance with Utah law. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or its attorney and may be recorded in the office of the Davis County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by nonjudicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure and the costs and expenses of such proceeding, the costs and expenses of filling the notice of lien, and all reasonable attorney fees.
- 11.11 **Personal Obligation of Owner.** The amount of any regular or special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of the Owner's Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney fees.

- 11.12 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Dwelling during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of the Owner's right, title, and interest in and to the real property for the purpose of securing the Owner's performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Taylor Jones, as trustee, an attorney licensed in the State of Utah, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Association may appoint a substitute trustee by executing a substitution of trustee as authorized in Utah Code Annotated, Section 57-1-22, without amending this paragraph.
- 11.13 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed as authorized by law, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.
- 11.14 **Personal Liability of a Purchaser.** In a voluntary conveyance, the purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 11.15 **Amendment of Article.** Except as may be necessary to conform to the law, as it may be amended from time to time, this Article XI shall not be amended unless the Owners of two-thirds (2/3) of the Lots in the Project consent and agree to such amendment by a duly recorded instrument.

ARTICLE XII

INSURANCE

- 12.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by a company licensed to do business in the State of Utah:
- (a) **Public Liability and Property Damage Insurance.** The Association shall obtain a broad form of comprehensive public liability insurance coverage for the Common Area in the Project, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for all activities in connection with the ownership, operation, maintenance, and other use of the Project.
 - (b) **Worker's Compensation Insurance.** Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.
 - (c) **Directors and Officers Insurance.** Directors and officers insurance (aka errors and omissions insurance) in such forms as the Association deems appropriate to cover acts of the directors, officers and agents of the Association against claims of negligence, mismanagement or breach of duty.
- 12.2 **Fire and Casualty Insurance.** The Association shall not be responsible to purchase insurance coverage on the Lots or on the Dwellings. The Association shall obtain insurance for the Association's Common Area structures as it deems necessary.
- 12.3 **Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.
- 12.4 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.
- 12.5 **Insurance Carried by Owners.** Each Owner is responsible for and shall obtain insurance, at Owner's own expense, providing coverage upon Owner's own Lot and/or in Owner's Dwelling, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate.

ARTICLE XIII CONDEMNATION

- 13.1 **Condemnation.** If at any time or times all or any part of the Common Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.
- 13.2 **Proceeds.** All compensation, damages, and other proceeds from any such taking by power of eminent domain shall be allocated among and distributed to the Owners in proportion to and based on the number of Lots in the Project. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

ARTICLE XIV COMPLIANCE WITH DECLARATION AND BYLAWS

- 14.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 14.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against the Association, shall be enforceable by Declarant or by any Owner of a Lot, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person, shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

ARTICLE XV DECLARANT'S SALES PROGRAM

- 15.1 **Declarant's Right to Promote and Sell the Project.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be an Owner ("Occurrence"), Declarant, its successor or assigns shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Lots owned by Declarant:
- (a) **Sales Offices and Model Lots.** Declarant, its successors and assigns, shall have the right to maintain sales offices, including a trailer, and model homes on Lots. Sales offices may be located on any Lot (at any location) owned by Declarant or may be located on any of the Common Areas of the Project. Declarant shall have the right to maintain any number of model homes it may desire using the Lots Declarant owns.

- (b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on the Common Areas or Lots owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary.
 - (c) **Right to Use the Common Areas.** Declarant shall have the right to use the Common Areas of the Project to entertain prospective purchasers or to otherwise facilitate Lot sales, provided said use is reasonable as to both time and manner.
- 15.2 **Declarant's Rights to Relocate Sales and Promotional Activities.** Declarant shall have the right from time to time to locate or relocate its sales offices, trailer, model homes and signs, banners and similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portions of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any sales structures, fixtures, improvements, signs, banners and similar sales materials and properties.
- 15.3 **Limitation on Improvements by Association During Sales Program.** Prior to the Occurrence, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as they existed when initially constructed.
- 15.4 **Limitation on Amending Association Documents.** During any time Declarant holds an ownership interest in any Lot or in any portion of the property, no amendment shall be made to the Declaration, Bylaws or Rules without the written consent and approval of the Declarant.

ARTICLE XVI MORTGAGEE PROTECTION

- 16.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosures or trustee's sale.
- 16.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

- 16.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.
- 16.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer.
- 16.5 **Amendment.** No provision of this Article XVI shall be amended without the consent of at least two-thirds of all first Mortgagees as appear on the official records of Davis County, Utah, as of the date of such amendment, which consent may be deemed as permitted by the provisions of the Community Association Act, U.C.A. § 57-8a-220. However, should this Article XVI be amended without the prior of at least two-thirds of all first Mortgagees, the first Mortgagees who have received a security interest in a Lot as indicated on the official records of Davis County, Utah, will not be subject to the amendment but will be bound by the provisions of Article XVI that existed of record at the time the first Mortgagee received a security interest. Any Mortgagee who receives a security interest in a Lot will be bound by the provisions of this Article XVI that existed of record at the time the Mortgagee received a security interest in a Lot.

ARTICLE XVII REINVESTMENT FEE

- 17.1 **Adoption of Reinvestment Fee.** The Association hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed .5% of the value of the Lot being sold. The Reinvestment Fee shall be paid by the purchaser of a Lot whenever a Lot is sold, transferred or conveyed to a new Owner.
- 17.2 **Reinvestment Fee Amount.** The Reinvestment Fee shall initially be in the amount of .5% of the value of the Lot being sold. By written resolution, the Board is authorized to increase or decrease the amount of the Reinvestment Fee, but in no event shall the Reinvestment Fee exceed the amount of .5% of the value of the Lot being transferred.
- 17.3 **Increase.** If the Board determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Davis County Recorder an amendment to this Declaration, in the form of a Board resolution, setting forth the amount of the new Reinvestment Fee.
- 17.4 **Binding Fee.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A", and is intended to bind successors in interest and assigns of the real property described in Exhibit "A", attached hereto.

- 17.5 **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit "A", attached hereto.
- 17.6 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- 17.7 **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's Common Areas and is required to benefit the Common Area property appurtenant to the Lots described in Exhibit "A", attached hereto.
- 17.8 **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- (a) a transfer of multiple Lots from the Declarant to another party.
 - (b) an involuntary transfer;
 - (c) a transfer that results from a court order;
 - (d) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
 - (e) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
 - (f) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.

ARTICLE XVIII HILLSIDE CONSTRUCTION

- 18.1 **Hillside Construction.** The subdivision and all homes within the Project are situated on the side of a mountain. As such, all Lot Owners acknowledge and accept that building on a hillside involves inherent risks, including but not limited to, soil instability, erosion, and water drainage issues. The Declarant disclaims any and all liability for issues arising from hillside construction. Lot Owners are solely responsible for conducting their own due diligence prior to construction, including consulting with qualified engineers and architects to ensure the safety and stability of their construction plans. Furthermore, all construction must comply with any setback requirements imposed by Kaysville City, including those related to the west side retaining wall. These responsibilities are solely those of the Lot Owners and are not transferable to the Declarant, the Board, or any other party associated with the Project.

ARTICLE XIX DISPUTE RESOLUTION

- 19.1 **Introduction.** It is in the best interest of the Members, the Association, the Board, and the officers (the "Parties") to encourage the amicable resolution of disputes arising out of the legal rights and obligations described in this Declaration without the emotional and financial costs of litigation. Each Member and the Association agrees that before filing

suit in any court it will first submit to the Alternative Dispute Resolution Procedures set forth below, (the "ADR Procedures"), with respect to any claim, grievance or dispute arising out of or relating to the Declaration, Bylaws, or Rules and Regulations (the "Claims"); provided, that a Party may begin litigation prior to complying with the ADR Procedures if doing so is required to satisfy the statute of limitations for the Party's Claim. In such an event, the Party filing the litigation shall simultaneously ask the Court to stay the litigation until the ADR Procedures have been satisfied.

19.2 **Exceptions.** Notwithstanding the foregoing, the ADR Procedures shall not be required for the following Claims unless all Parties to the matter agree to submit the matter to the ADR Procedures:

- (a) any suit between Members which does not include the Association or the Declarant as a party, if such suit asserts a claim which would constitute a cause of action independent of the Association or the Declarant;
- (b) any suit in which any indispensable party is not bound by this Article XIX;
- (c) any collection activity, action or suit brought by the Association against an Owner involving the collection of delinquent assessments, Fines or Common Area fees;
- (d) actions by the Association to collect assessments or other amounts due from any Owner; and
- (e) actions brought by the Association to obtain a temporary restraining order, preliminary injunctive relief, or other preliminary equitable relief and such ancillary relief as the Association may deem necessary in order to enforce the provisions of this Declaration (an "Enforcement Action").

19.3 **Procedure for Disputes Between Members.**

- (a) **Good-Faith Discussion.** The aggrieved Party ("Complainant") shall attempt to resolve the Claim with the other Party ("Respondent") through good-faith discussion.
- (b) **Submission of Complaint.** If the Claim is not resolved through good-faith discussion, Complainant shall provide the Board and each Respondent with a written statement of the material facts of the Claim (the "Complaint"). The Complaint shall include the following:
 - (i) the nature of the Claim, including the parties involved and the Respondent's role in the Claim;
 - (ii) a brief description of the discussions of the parties and their attempts to resolve the Claim informally;
 - (iii) copies of relevant documents supportive of Complainant's position; and

- (iv) Complainant's proposed resolution or remedy.

The Complaint must include all Claims that exist between the Parties at that time. Any Claim not included in the Complaint is expressly waived by the Complainant. Respondent shall have fifteen (15) days from receipt of the Complaint to file a response (the "Response") with the Complainant and the Board. The Response must include any Claim that the Respondent has concerning the Complainant at the time that the Response is submitted to the Board. Any Claim that is not included in the Response is expressly waived by the Respondent. The Response shall include any documents, descriptions, explanations or other material supporting the Response.

- 19.4 **Review by Board.** The Board shall undertake a reasonable review of the Complaint and the Response and shall issue a written decision, including an explanation of the reasons for the decision, within thirty (30) days of receipt of the Response. A copy of the decision shall be sent to the Parties promptly via first class mail. The Board's decision shall be the final and binding resolution of the Claims submitted in the Complaint and the Response unless within thirty (30) days from the date that the decision is mailed either Party delivers to the Board and all other Parties a "Notice of Objection to the Board's Decision and Intent to Submit to Mediation."

19.5 **Mediation.**

- (a) Within thirty (30) days of receipt of the Notice of Objection to the Board's Decision and Intent to Submit to Mediation, the Board shall contact the Parties with proposed mediation dates and a list of potential mediators. A neutral third-party or professional mediator that has been agreed to by the Parties shall conduct the mediation.
- (b) The mediation shall be held in the State of Utah at a location agreed upon by the Parties. Unless otherwise agreed by the Parties, the mediation shall take place no later than three (3) months from the date of the Board's decision. If the Parties do not agree to extend this period and mediation does not occur within this time period, then this requirement is deemed to be satisfied.
- (c) Unless otherwise agreed by the Parties, all fees and costs of the mediation shall be borne by the Party submitting the Notice of Objection to the Board's Decision and Intent to Submit to Mediation.

19.6 **Litigation.**

- (a) All Claims between the Parties not otherwise resolved by the process outlines in Sections 19.3 and 19.4 above may be filed in the relevant Court.
- (b) In no event shall a Party be entitled to litigate a Claim after the time for taking legal action on the Claim has expired.

- (c) The prevailing Party in the litigation shall be awarded its reasonable attorneys fees and costs associated with the dispute. Punitive damages, however, shall not be awarded in any dispute.

19.7 **Procedure Subject to Change by Board.** The procedures outlined in this Article XIX may be amended from time to time by the Board without the consent of the Owners, as the Board deems necessary, in light of experience, to better accomplish the amicable resolution of disputes arising out of the legal rights and obligations described in the Governing Documents; provided, such modifications shall not take effect until three months after a copy of the new procedures is delivered to the Owners.

ARTICLE XX GENERAL PROVISIONS

- 20.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a residential project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.
- 20.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 20.3 **Registration of Mailing Address.** Upon the purchase of any Lot, the Owner of such Lot shall register with the Association the Owner's current mailing address. All notices or demands intended to be served upon any Owner shall be sent as provided in the Bylaws.
- 20.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his or her own expense, cause an audit or inspection to be made of the books and records maintained by the Association.
- 20.5 **Amendment.**
- (a) Except as otherwise provided herein, this Declaration, and any amendments to the Declaration, may be amended with or without a meeting of the Owners by the affirmative consent or vote of at least sixty-seven percent (67%) of the Owners. All

necessary written consents must be obtained prior to the expiration of ninety (90) days from the date the first written consent is obtained. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by an officer of the Association certifying that the vote required by this Article has occurred, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Davis County, State of Utah.

- (b) During the Period of Administrative Control, the Declarant shall have and is hereby vested with the right to amend this Declaration and the Plats by an instrument duly executed and acknowledged by Declarant and recorded in the Official Records of the County Recorder of Davis County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, and such amendment shall not take away any substantive legal rights of those Owners who own a Lot at the time of such amendment by the Declarant. This paragraph does not restrict the Declarants right to expand under the provisions of Article XX herein.
- (c) No amendment to this Declaration shall be adopted or passed or have any effect, which amendment in any way seeks to change, reduce, restrict, modify, or impact any of the rights or privileges granted under Article XV to Declarant, or to those who are intended to be benefitted by the provisions in Article XV, unless such amendment is first agreed to in writing by the Declarant or any person, group or entity in any manner impacted by the amendment.

- 20.6 **Effective Date.** This Declaration and any amendments thereto shall take effect upon recording.
- 20.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.
- 20.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, ground water, rain, snow or ice, or the settling of ground beneath a Dwelling. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.
- 20.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing,

renting, or selling on contract the Owner's Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.

[Signatures on Next Page]

EXECUTED BY DECLARANT on the date of notarization appearing below:

Compass Holdings Development, LLC

Chris Treviño
By CHRIS TREVINO
Its: Manager

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On this 7th day of October, 2024, personally appeared before me CHRIS TREVINO who being by me duly sworn, did say that (s)he is manager of Compass Holdings Development, LLC, and that the within and foregoing instrument was signed in behalf of said limited liability company and (s)he duly acknowledged to me (s)he executed the same.

Kassandra Ratushniak
Notary Public

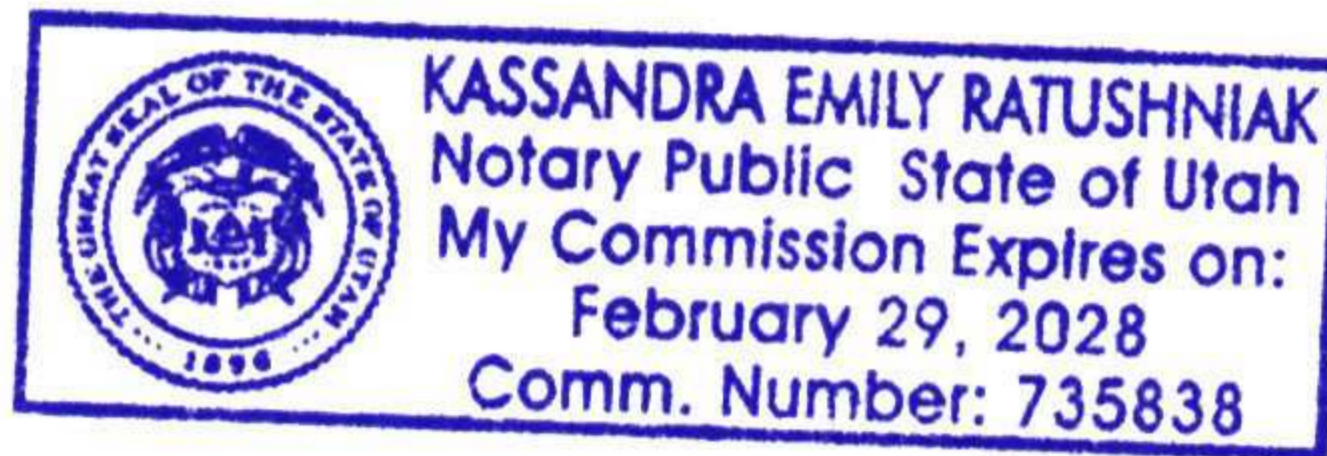


EXHIBIT “A”

LEGAL DESCRIPTION

A parcel of land situate in the Northwest Quarter of Section 25, Township 4 North, Range 1 West, Salt Lake Base and Meridian also being in Kaysville City, Davis County, Utah. Being more particularly described as follows:

Beginning at the North Quarter Corner of said Section 25, said point also being Southeast Corner of Twin Peaks Cove #3, and running thence:

thence South $0^{\circ}15'44''$ West 929.80 feet;

thence North $89^{\circ}50'45''$ West 826.26 feet;

North $0^{\circ}09'15''$ East 55.00 feet;

thence northwesterly 1.45 feet along the arc of a 172.50-foot radius non-tangent curve to the right (center bears North $04^{\circ}04'35''$ East and the long chord bears North $89^{\circ}35'52''$ West 1.45 feet with a central angle of $0^{\circ}39'06''$);

thence North $0^{\circ}09'15''$ East 5.00 feet to a point on the northerly right-of-way line of Stone House Bend;

thence along the perimeter of Orchard Ridge Phase 3 the following four (4) courses and distances:

1) thence westerly 43.81 feet along the arc of a 172.50-foot radius non-tangent curve to the right (center bears North $14^{\circ}42'23''$ East and the long chord bears North $82^{\circ}34'11''$ West 43.69 feet with a central angle of $14^{\circ}33'08''$);

2) thence North $0^{\circ}08'25''$ East 191.57 feet;

3) thence South $89^{\circ}51'35''$ East 174.27 feet;

4) thence North $0^{\circ}09'15''$ East 422.66 feet to the southerly line of Lot 7, Bromsfield Subdivision, Amended;

(8) thence South $89^{\circ}50'45''$ East 25.61 feet along southerly line of Bromsfield Subdivision;

(9) thence North $0^{\circ}11'10''$ East 250.00 feet along the easterly line of Lot 7, Bromsfield Subdivision to to the southerly line of Twin Peaks Cove;

thence South $89^{\circ}50'45''$ East 672.84 feet along said southerly Line to the Point of Beginning.

Contains: 678,729 square feet, 15.585 acres;

Less and excepting a parcel conveyed in that warranty deed,
Entry No. 295927 (recorded February 24, 1966 in Book 338 at Page 641).

EXHIBIT "B"

Bylaws

BYLAWS
FOR
STONE HOUSE BEND HOMEOWNER'S
ASSOCIATION

The following are adopted as the administrative Bylaws of Stone House Bend Homeowner's Association ("Stone House Bend").

ARTICLE I
PLAN OF LOT OWNERSHIP AND INCORPORATION

- 1.1 **Submission.** These Bylaws are adopted by the Owners of Lots in the Stone House Bend Subdivision. As used in these Bylaws, any reference to the Stone House Bend Subdivision shall also mean and refer to Phase 4 of the Orchard Ridge Estates Subdivision. These Bylaws shall govern the administration of Stone House Bend Homeowner's Association.
- 1.2 **Definitions.** The words defined in Article I of the Declaration of Covenants, Conditions and Restrictions for the Stone House Bend Subdivision (the "Declaration"), shall have the same meaning when used herein unless the context clearly requires another meaning.
- 1.3 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration or any amendments thereto, the latter shall in all instances govern and control.
- 1.4 **Office and Registered Agent.** The Registered Agent of the Association shall be the President or Secretary of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designated by the President.
- 1.5 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Stone House Bend shall be subject to and abide by these Bylaws.

ARTICLE II ASSOCIATION

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Stone House Bend.
- 2.2 **Voting.** Each Owner shall have the number of votes listed on Exhibit "C" to the Declaration.
- 2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
- 2.4 **Annual Meeting.** Unless otherwise designated by the Board, the annual meeting of the Association shall be held at 7:00 o'clock p.m. on the second Tuesday of November of each year, or at such other suitable day, date and time as may be designated by the Board from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.
- 2.5 **Special Meetings.** The President shall call a special meeting (a) if he or she so desires, (b) if a majority of the members of the Board of Directors direct the President to do so, or (c) upon receipt of a petition signed and presented to the Secretary of the Board by at least twenty-five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
- 2.6 **Notice of Meeting.** It shall be the duty of the Secretary to give notice of (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of the Owner respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- 2.7 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of

Directors for the purpose of service of such notice or to the Lot of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.

- (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Lot Owner by mail.
- (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Dwelling, or by securely attaching a copy of the notice to the front entry door of the Owner's Dwelling.

2.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, the Owner shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all assessments due.

2.9 **Proxies.** The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.

2.10 **Quorum Requirements.** The quorum at any meeting of the members shall be as follows: At the first meeting called, the presence of the Owners or of proxies entitled to cast fifty percent (50%) of all of the Class A Members shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 2.6 above at which a quorum shall be one-half of the quorum which was required at the immediately preceding

meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

2.11 **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) roll call to determine quorum status;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special Boards, if any;
- (f) appointment of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

2.12 **Conduct of Meeting.** The President shall, or in the President's absence the Vice-president, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

ARTICLE III BOARD OF DIRECTORS

3.1 **Powers and Duties.** The affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Board may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for at least the following:

- (a) Preparation of an annual budget;
- (b) Determining the annual assessment of each Owner;
- (c) Managing the Association;
- (d) Maintaining the Common Areas and Facilities;
- (e) Collecting the assessments;
- (f) Depositing the collections into a federally insured interest bearing account or accounts;
- (g) Adopting and amending rules and regulations;
- (h) Enforcing the Project Documents;
- (i) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (j) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.
- (k) Commencing legal action when necessary;

- (l) Purchasing and maintaining insurance for the Association and the Board;
- (m) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Lots.
- (n) Keeping books and records of the Association;
- (o) Providing common utility services as needed;
- (p) Paying any amount necessary to discharge any mechanic's or materialman's lien or other encumbrance levied against the Common Area or Facilities;
- (q) Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
- (r) Levying fines, sanctions and citations;
- (s) Making emergency repairs;
- (t) Towing or impounding motor vehicles;
- (u) Evicting non-Owner residents in material violation of the Project Documents or who have created and failed to abate a nuisance; and
- (v) Doing such other things and acts necessary to accomplish the foregoing.

- 3.2 **Composition of Board of Directors.** The Board of Directors shall be composed of three (3) members of the Association.
- 3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Lot shall serve on the Board at any given same time.
- 3.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be one (1) year and each member shall serve on the Board until such time as a successor is duly qualified and elected.
- 3.5 **Initial Organizational Meeting.** The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.
- 3.6 **Regular Meetings.** Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly.
- 3.7 **Special Meetings.** Special meetings of the Board may be called by the President, Vice-president or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, by telephone or electronic means, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.
- 3.8 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

- 3.9 **Quorum.** At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no shorter than two (2) days nor more than five (5) days and give notice of the rescheduled meeting to the members not in attendance. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.
- 3.10 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting.
- 3.11 **Removal of Board Member.** A member may be removed, with or without cause, and a successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.12 **Compensation.** Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.
- 3.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.

- (b) **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.
 - (c) **Action Without a Formal Meeting.** Any action 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, shall be signed by all members of the Board.
- 3.14 **Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE IV NOMINATION AND ELECTION OF BOARD MEMBERS

- 4.1 **Nomination Process.** The process for the nomination and election of the Board of Directors shall proceed as set forth herein.
- 4.2 **Nominating Committee.** Nominations for election to the Board shall be made by a Nominating Committee, whose purpose is to seek out and locate qualified individuals as candidates for election to the Association's Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the existing Board, and three or more additional members of the Association, who may or may not be current members of the Board. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Association at which an election will be held. The Nominating Committee shall serve for a term of one year. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Nominating Committee may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Nominating Committee's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Nominating Committee shall submit to the Board those names as candidates which a majority of the Nominating Committee recommend be placed on the Association ballot. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Section 4.2, then nominations shall be made from the floor at the annual meeting or any special meeting.
- 4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 4.4 **Nominations.** The names of the candidates recommended by the Nominating Committee shall be included in the Notice of the annual meeting sent to members of the Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates

are permitted. Nominations may also be received from members of the Association from the floor at the annual meeting of the members.

- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Lot is entitled to vote as provided in the Declaration and Bylaws. Voting need not be conducted by secret ballot.

ARTICLE V OFFICERS

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice-president, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 5.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and a successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The President shall be the chief executive officer; he or she shall preside at meetings of the Association and the Board and shall be an ex officio member of all Boards; he or she shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He or she shall have all of the general powers and duties, which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
- 5.5 **Vice-president.** The Vice-president shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice-president is able to act, the Board shall appoint a member of the Board to do so on an interim basis.
- 5.6 **Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for Boards when required. He or she shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be

open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

- 5.7 **Treasurer.** The Treasurer shall have custody of all funds and securities. He or she shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He or she shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all the transactions as Treasurer and of the financial condition of the Project.

ARTICLE VI FISCAL YEAR

- 6.1 The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

ARTICLE VII AMENDMENT TO BYLAWS

- 7.1 **Amendments.** These Bylaws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

ARTICLE VIII COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.
- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the County Recorder of Davis County.

EXHIBIT "C"

LIST OF LOTS, VOTES AND ASSESSMENT PERCENTAGES

All Lots and their Owners have the number of votes identified below, and shall be assessed a percentage of the Common Area expenses, as follows:

| <u>Lot</u> | <u>VOTES</u> | <u>ASSESSMENT PERCENTAGE & PERCENTAGE OWNERSHIP IN COMMON AREA</u> |
|---------------|--------------|--|
| 401 | 1 | 1% |
| 402 | 1 | 1% |
| 403 | 2 | 8.91% |
| 404 | 2 | 8.91% |
| 405 | 2 | 8.91% |
| 406 | 2 | 8.91% |
| 407 | 2 | 8.91% |
| 408 | 2 | 8.91% |
| 409 | 2 | 8.91% |
| 410 | 2 | 8.91% |
| 411 | 2 | 8.91% |
| 412 | 2 | 8.91% |
| 413 | 2 | 8.91% |
| Totals | 24 | 100% |