

E 3627073 B 8798 P 1183-1240
KELLY A. SILVESTER
DAVIS COUNTY, UTAH RECORDER
7/28/2025 2:51 PM
FEE 40.00 Pgs: 58
DEP AJH REC'D FOR KAYSVILLE
CITY CORP

WHEN RECORDED, RETURN TO:

Millstream Management, LLC
172 N. East Promontory, Suite 275
Farmington, Utah 84025
Attn: Greg Nelson

Tax Parcel Nos. See Exhibit A
Pt. 11-095-0106

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS
FOR THE RESIDENCES AT
FLINT ACRES A PLANNED UNIT DEVELOPMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE RESIDENCES AT FLINT ACRES ("**Declaration**"), is made and executed as of the date first written below on the signature page and is effective when recorded in the office of the Davis County Recorder by the Declarant (as defined below).

RECITALS

A. Declarant hereby establishes and adopts this Declaration to establish a governance structure and standards and procedures for the development, administration, maintenance, and preservation of the Project. By signing this Declaration, Declarant subjects the Property to the terms, covenants, conditions, and restrictions contained herein and the Bylaws attached hereto.

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

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

DECLARATION

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

1. DEFINITIONS

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

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

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

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

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

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

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

1.8 **"Claim"** (or collectively, **"Claims"**) means any and all claims, demands, suits, actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorney fees and costs.

1.9 **"Common Area and Facilities"** shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or property of a designated as Limited Common Area, and, specifically, shall include, but not be limited to, the following, as applicable: (a) all Common Area and Facilities designated as such the Plat; (b) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area; (c) any fence or wall on common property; (d) any roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City or designated as Limited Common Area; or (e) and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, the

and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned by the Association.

1.10 **"Common Expenses"** shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.11 **"County"** shall mean and refer to Davis County, a political subdivision of the State of Utah.

1.12 **"Declarant"** shall mean and refer to FLINT ACRES, LLC, a Utah limited liability company, and its respective affiliates, successors, and assigns.

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

1.14 **"Declarant Related Parties"** shall mean any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest and their respective members, managers, shareholders, officers, directors, partners, co-venturers, committee members, servants, agents, representatives, and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.15 **"Development Agreement"** shall mean and refer to any development agreement recorded against the Property.

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

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

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

1.19 **"Limited Common Area"** shall mean and refer to any real property and improvements designated by the Declarant in a Supplemental Declaration or Plat or in another

recorded instrument (which designation is made in the sole and absolute discretion of the Declarant) as Limited Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Limited Common Area Assessments attributable thereto, to one or more but less than all the Units within the Project and which is or will be conveyed to the Association or as to which the Association will be granted the rights and obligations for primarily the benefit of designated Units within the Project. The Supplemental Declaration, Plat or other recorded instrument establishing the Limited Common Area shall identify the Units assigned to that Limited Common Area and shall further identify whether the purpose of the Limited Common Area is for exclusive use of the Owners and Occupants of the assigned Units and payment of the Limited Common Area Assessments, or only for the purposes of paying the Limited Common Area Assessments attributable thereto.

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

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

1.22 **"Limited Common Area Improvements"** means patios, decks, hot tubs, fixed barbeque equipment (i.e., not readily mobile), playground equipment, basketball standards and other such outdoor improvements that may be placed within the Limited Common Area.

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

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

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

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

1.27 **"Party Wall"** shall mean a wall, including without limitation a foundation wall, that forms part of a Unit and is located on or adjacent to a boundary line between two or more adjoining Lots or Units that are owned by more than one (1) Owner and is used or is intended to

be used by the Owners of the benefitted Units as a residential structural partition wall. A Party Wall may be separated by a sound board between two or more Units.

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

1.29 **"Plat"** shall mean and refer to the plat of subdivision for The Residences at Flint Acres, recorded in the office of the Davis County Recorder, including all recorded amendments and supplements thereto.

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

1.31 **"Project"** shall mean and refer to The Residences at Flint Acres and all structures and improvements thereon including the Units and the Common Area and Facilities.

1.32 **"Property"** as previously defined herein, shall include the real property made subject to this Declaration and all easements and rights appurtenant thereto. The initial Property subject to this Declaration is described on Exhibit A attached hereto.

1.33 **"Released Persons"** shall mean the following Persons: (i) every director and officer of the Association, (ii) every member of the Board, or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association.

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

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

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

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

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

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

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

1.41 **"Transfer"** shall mean any of the following: (a) a conveyance, sale, or other transfer of a Lot or Unit as reflected by the recordation of a deed or other instrument in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not, excluding the grant of an interest in a Lot through a mortgage or deed of trust, (b) the granting of a life estate in a Unit, or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity's share, stock, membership interests, or partnership interests in a twelve (12) month period.

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

2. THE PROJECT

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

2.2 Nature of Project. The Project shall be comprised of single-family and multi-family residences.

2.3 Project Name. The Project is named "The Residences at Flint Acres". Notwithstanding, the name commonly used by the Association or others for the Project may be

different than the name identified in this Declaration and on the Plat. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.

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

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

3.2 Variances between the Plat and As-Built Construction. The Original Construction (defined below) shall be the controlling dimension for any Unit. The original construction shall be the initial installation of foundations, framing, wallboard, and the like (the "Original Construction"). The Board of Directors may, in its sole discretion, determine if the present construction varies from the Original Construction. If the Board of Directors determines that the present construction varies from the Original Construction, then the Association, at the expense of the Association or the Owner, may require that the present construction be made to comply with the Original Construction. Nothing herein will excuse an Owner from the need to obtain any variances from any municipality or governmental authority.

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

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

4. ASSOCIATION GOVERNANCE AND ORGANIZATION

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

4.2 Membership. Membership in the Association shall at all times be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the Transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. Membership in the Association by each Owner is mandatory.

4.3 Availability of Documents.

4.3.1 Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Association documents consistent with the requirements of the Act and the Utah Revised Nonprofit Corporation Act.

4.3.2 Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Association documents related to the operations of the Association as may be required by the Act and the Utah Revised Nonprofit Corporation Act.

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

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

4.5 Director Qualifications. Except as otherwise provided herein, to serve on the Board of Directors, a Person must be an Owner current on the payment of Assessments, and, if a natural person, over the age of eighteen (18) years old. No two Directors may reside in the same Unit, be the spouse or significant other of one another, or be business partners if the business is related to their ownership of one or more Unit(s). Additional Director qualifications may be contained within the Bylaws, as well as the election, number, and term limits of Directors. This Section 4.5 shall not be applicable during the Declarant Control Period.

4.6 Limitation on Authority of Owners, Directors, Officers, and the Board of Directors. Except as provided in the Declaration or the Bylaws, neither any individual Director nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to: (i) amend or terminate any Governing Document; (ii) elect or remove Director(s); (iii) establish or change the qualifications, powers and duties, requirements, or terms of Directors or of the Board

of Directors; or (iv) authorize or agree to any deviation or exception from the Restrictions, except as provided by the Act or other applicable law.

4.7 No Estoppel or Reliance Contrary to Governing Documents. No one may rely upon any authorization contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that the Association, does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

5. ASSOCIATION GENERAL RIGHTS AND RESPONSIBILITIES

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

5.2 Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and Facilities and the Project, in accordance with the general purposes specified in this Declaration and the Governing Documents. Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association. Consistent with Exhibit C, the Association shall maintain the exterior wall finishes of a residential unit.

5.3 Common Area and Facilities. The Common Area and Facilities shall be maintained by the Association, unless otherwise provided herein or pursuant to a separate agreement between the Association and an adjacent property owner.

5.4 Paving Expenses. The Association shall provide for the payment of Association expenses and any expenses related to any cross-access, vehicular access, pedestrian access, or similar access agreement between the Project and an adjacent property owner.

5.5 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate and maintain the Project consistent with the requirements of the Governing Documents. Additionally, the Association may establish, collect, and account for costs associated with any agreement with an adjacent property owner for which the Association provides any services.

5.6 Cross-Access and Shared Parking. As determined by the Association, or Declarant during the Declarant Control Period, the Association may enter into a cross-access easement, shared parking agreement, and/or any other similar document governing vehicular and pedestrian access as well as maintenance obligations with respect thereto.

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

5.8 Hiring Managers and Delegating Responsibilities. Subject to the terms and conditions of Section 18.4 below, the Association shall hire a Manager to assist the Board of Directors in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers delegated may be revoked by the Board of Directors at any time, with or without cause.

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

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

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

5.12 Establishing Hearing Procedures. The Board of Directors shall have the authority to create a reasonable hearing process on an as-needed basis for particular matters in case a hearing process is required by law. Any such hearing process shall provide, at a minimum for: (a) at least ten days' notice of the hearing to the affected Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.13 Annual Meeting. The Association shall arrange for and conduct an annual meeting of the Owners (except as otherwise allowed by law) as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law. Notwithstanding the foregoing, to the fullest extent permitted by law, the Association shall not be required to arrange for and conduct an annual meeting of the Owners during the Declarant Control Period.

5.14 Payoff Information Fees. An Owner may request payoff information from the Association needed in connection with the financing, refinancing, or Transfer of an Owner's Lot by: (a) providing written notice to the designated manager for the Association requesting the payoff information, which notice must contain (i) the name, telephone number, and address of the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information, and (b) a written consent for the release of the payoff information, which identifies the person requesting the information as a person to whom the payoff information may be released, and signed and dated by the Owner of the Lot for which the payoff information is requested. The Association is specifically authorized to establish a fee to provide payoff information related to the Transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board of Directors may increase or decrease the fee amount so long as it is consistent with the Act.

5.15 Reinvestment Fee Covenant upon Sale or Transfer of Unit. The Board of Directors, or the Declarant during the Declarant Control Period, may require the transferor/seller or transferee/buyer to pay a fee related to the Transfer of a Unit (a "Reinvestment Fee") as provided for in Utah Code Ann. §57-1-46 in an amount to be determined by the Board of Directors, or the Declarant during the Declarant Control Period, and to the extent allowed by law. For purposes of this Section 5.15, a transfer is any change in the ownership of the Unit as reflected in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not but shall not include (a) any Transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant, (b) an involuntary transfer, such as a transfer as part of a condemnation proceeding or sale in lieu of condemnation, (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 in interest due to death, provided in a will, trust or decree of distribution, or (f) the transfer of a burdened property by a financial institution, except to the extent the reinvestment fee covenant requires a payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.00. The amount shall be established by the Board of Directors, or the Declarant during the Declarant Control Period, consistent with Utah Code Ann. §57-1-46 or in the Notice of Reinvestment Fee Covenant. The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code Ann. §57-1-46. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include requirements for Owners to provide sales and transfer documents, and other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

6. BUDGET AND ASSESSMENTS

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

6.2 Budget and Regular Assessment. The Board of Directors is authorized and required to adopt a budget for the fiscal year prior to the beginning of each fiscal year. The Board of Directors shall use its reasonable discretion to revise the budget from time to time as appropriate. The budget shall include a line item for the amount to be placed into the reserve fund. The Board of Directors shall divide the total budget amount for Common Expenses by the Allocated Interest for each Unit to determine the amount of the regular Assessments to be paid by each Owner. The Board of Directors shall present the adopted budget to the Owners at an annual or special Association meeting. In the event no new budget is prepared and adopted by the Board of Directors, the last adopted budget shall continue until a new budget is adopted.

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

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

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

6.6 Rules Regarding Billing and Collection Procedures. The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be

charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

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

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

6.9 Individual Assessments to a Particular Unit. Individual Assessments may be levied by the Board against a particular Unit and its Owner for:

- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
- (b) Fines, late fees, collection charges, and interest; and
- (c) Attorney fees, costs, and other expenses relating to any of the above.

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

6.11 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors, in its discretion, may determine how to apply such excess reserves. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.12 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason,

including, without limitation, a claim that the Board of Directors is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

6.13 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

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

7. EFFECT OF NONPAYMENT AND REMEDIES

7.1 Late Fees and Interest. Any Assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in the amount of \$50, or as may be otherwise determined by the Board consistent with applicable law from time to time. In addition, all fees and Assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors.

7.2 Lien for Assessments. The Association has a lien on a Unit for Assessments and, except as otherwise provided in this Declaration, for fines, fees, charges, and costs associated with collecting an unpaid Assessment, including court costs and reasonable attorney fees, late charges, interest, fines, and any other amount that the Association is entitled to recover under this Declaration, at law, or an administrative or judicial decision. The obligation to pay Assessments hereunder is part of the purchase price of each Unit when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, Declarant (and each Owner by acceptance of a deed to a Unit) hereby conveys and warrants pursuant to Utah Code Ann. §§57-1-20 and 57-8a-302 to the Association's attorney, as trustee, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration. to secure the payment of Assessments and other amounts owed hereunder. The recording of this Declaration constitutes record notice and perfection of the above-described lien. If an Assessment is payable in installments, the lien will be for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in a notice of Assessment. An unpaid Assessment or fine accrues interest at the rate provided in this Declaration. The lien provided in this Section 7.2 has priority over each other lien and encumbrance on a Unit except: (a) a lien or encumbrance recorded before the Declaration is recorded; (b) a first or second security interest on the Unit secured by a Mortgage that is recorded before a recorded notice of lien by or on behalf of the Association; or (c) a lien for real estate taxes or other governmental Assessments or charges against the Unit. To evidence any lien hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the Assessments and other amounts due and owing, the name of the Owner of the Unit subject to such Assessments and other amounts due and owing

and a description of such Unit, which shall be signed by an officer of the Association and may be Recorded.

7.3 Legal Remedies. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. In addition, to enforce the lien, the Association may cause a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, in the manner provided by Utah Code Ann. §§57-1-24, 57-1-25, 57-1-26, and 57-1-27 (as amended from time to time) and the Act, or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a Mortgage and the Act. Foreclosure or attempted foreclosure or the sale or attempted sale of a Unit by the Association of its lien as addressed in Section 7.2 above shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at Foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code §§57-8a-302 and -303, as the same may be amended. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

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

8. RESERVED

9. COVENANTS, CONDITIONS, AND RESTRICTIONS

9.1 Use of Lots. All Lots within the Project shall be used only for the construction and occupancy of single-family or multi-family dwellings. All Lots shall be used, improved, and devoted exclusively for such single-family and multi-family residential use in compliance with the Governing Documents and applicable County ordinances.

9.2 Party Wall Maintenance. By acceptance of a deed to a Unit, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Walls be maintained in good condition and repair to preserve the integrity of the Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall appurtenant to their Unit. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components

which face into such Owners' respective Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit one or more, but fewer than all, of the Owners, the Owner(s) benefited thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. If the need for maintenance or repair of a Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Walls, except as may be otherwise provided in the immediately preceding sentences, or as otherwise maintained by the Association, the Owners benefitted by a Party Wall or shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If there is a dispute over the responsibility for maintenance or repair of a Party Wall, the Association may, but shall not be required to, intervene and determine each Owner's responsibility.

9.3 Rentals. Any Owner may lease its Unit to others so long as the use of the Unit complies with this Declaration and applicable law; provided, however, that no Unit may be leased for a period of less than thirty (30) days. Any lease agreement will be in writing and will provide that the terms of the lease are subject to the Association Documents and that any failure by the tenant to comply with the Association Documents will be considered a default under the lease. Any Owner who leases its Unit will provide an executed copy of the lease to the Association within 30 days after execution of the lease. No Unit may be subjected to time interval ownership or any other similar form of ownership arrangement. The Association shall have the right and the obligation to enforce compliance with the Declaration and Bylaws against any Owner and/or occupant of any Unit and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third-party beneficiary under any lease agreement, to enforce such compliance.

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

9.5 Garbage and Refuse Disposal. No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials shall not be kept except in covered containers. All trash containers shall be kept screened from view from the street behind the rear corners of a residential dwelling or in a residential dwelling's garage, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Project is prohibited. Each

Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

9.6 Signs. The Board may cause all unauthorized signs to be removed. This Section shall not apply to any signs used by Declarant or its agents in connection with the original development and construction of the Lots. No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Board.

9.7.1 *For Sale or Rent Signs*. No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Board; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven (7) square feet or smaller in size which states that the premises are for sale or for rent. During construction of the residence, builder, or Owner of any Lot may display a sign up to sixteen (16) square feet, provided that the design and construction of said sign comply with the sign design and construction criteria issued by the Board.

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

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

9.9 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project.

10. RIGHT TO USE COMMON AREA AND FACILITIES

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

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

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

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

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

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

10.2.2 The right of the Association to suspend an Owner's right to the Common Area and Facilities: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the

Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; and

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

10.3 Utilities. Easements and rights-of-way over, under, and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, sanitary sewer systems, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through, or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit. For clarity, Central Davis Sewer District will only own the sewer line connecting the Project to the property owned by Smith Food & Drug Centers, Inc. and continuing along Pleasant View Drive. Service laterals for utilities will be the responsibility of the Owner of the Unit served by the applicable service lateral.

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

10.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and

each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

11. INSURANCE

11.1 Property Insurance.

11.1.1 The Association will maintain a "master" or "blanket" policy of special form property insurance covering 100% of the current replacement cost of the Common Area and Facilities and any residential structure containing two or more residential units (a "**Building**") (which may or may not include coverage for casualty loss caused by an earthquake in such coverage amounts and with respect to such insured property as the Board may determine in its sole and absolute discretion, subject to the requirements of applicable law, if any); building service equipment, personal property and supplies comprising a part of the Common Elements or owned by the Association; and any fixture, improvement, or betterment installed by an Owner to a Building, including interior walls, floor coverings (including carpet, wood, stone, tile, etc.), counter tops (including granite and other hard surface tops), patios, decks, cabinets, light fixtures, electrical fixtures, heating or plumbing fixtures (including fireplaces), paint, wall covering, window, and any other item permanently part of or affixed to a Building (real or decorative); but excluding land, foundations, excavations, and other items normally not covered by such policies. For the avoidance of doubt, a single-family, detached home is not a "Building" and the Association shall not maintain any insurance relating thereto.

11.1.2 The property insurance policy will be issued in the name of the Association for the use and benefit of the Association and the individual Owners, as their respective interests may appear. Loss payable will be in favor of the Association as a trustee for the Association, the Owners and the Lenders, as their respective interests may appear. Certificates of insurance will be issued to any Owner or Lender on request.

11.1.3 The property insurance policy will contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or similar appropriate provision will provide that the policy may not be cancelled or substantially modified without at least ten days' prior written notice to the Association, the Owners, and each Lender that is listed as a scheduled holder of a loan in the policy.

11.1.4 The property insurance policy will provide for the following to the extent such terms can be secured by the Association using commercially reasonable efforts: (i) a waiver of the right of subrogation against Owners individually and each member of the Owner's household; and (ii) the policy is primary if the Owner has other insurance covering the same loss; provided, however, in such event and notwithstanding the primacy of the insurance maintained by the Association, the Owner is responsible for the Association's policy deductible. In addition, if, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (C) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; and (D) an Owner who does not have a policy to cover the Association's property insurance policy deductible

is responsible for the loss to the amount of the Association's policy deductible, as provided in Subsection 11.1.7 below.

11.1.5 The property insurance policy will also contain or provide an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement" (if available). Each Unit Owner shall provide written notice to the Association of any material improvements to such Owner's Unit within thirty (30) days following the completion of such material improvements.

11.1.6 The Association is not responsible for and the insurance maintained by the Association does not cover the personal property of the Owners.

11.1.7 An Owner that has suffered damage to any combination of a residential unit in a Building ("**Residential Unit**") or a Limited Common Area appurtenant to such residential unit ("**Living Unit Damage**") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy (a "**Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("**Living Unit Damage Percentage**") for that Residential Unit to the amount of the deductible under the Association's property insurance policy. If an Owner does not pay the amount required under this Subsection within 30 days after substantial completion of the repairs to, as applicable, the Residential Unit or the Limited Common Area appurtenant to the Residential Unit, the Association may levy an assessment against the Owner for that amount.

11.1.8 The Association shall set aside an amount equal to the amount of the property insurance policy deductible or \$10,000, whichever is less, in a reserved fund maintained at the Board's discretion. The Association shall maintain a certificate or memorandum of the insurance maintained by the Association in the office of the Association, which memorandum or certificate shall be available for inspection by any Owner and shall identify the amount of the applicable deductible.

11.2 Liability Insurance. The Association will obtain and maintain commercial general liability insurance in the amount of at least \$2,000,000 in the aggregate, covering the Association and the Owners for all damage or injury caused by the negligence of the Association or any of its members or their respective agents. Such insurance will cover claims of one or more insured parties against other insured parties.

11.3 Directors and Officers Insurance. The Association will obtain and maintain a directors and officer's liability or errors and omissions policy, if reasonably available without unduly excessive premiums as determined by the Board in its discretion, with at least \$1,000,000 in coverage.

11.4 Fidelity Bond. The Association may obtain and maintain a separate fidelity bond in a reasonable amount to be determined by the Board to cover all non-compensated officers as well as all employees for theft of Association funds.

11.5 Miscellaneous Items. The following provisions will apply to all insurance coverage:

11.5.1 The Insured. Any policy required to be maintained by the Association under this Article will name as insureds the Association and the Owners.

11.5.2 Designated Representative. The Association may designate an authorized representative of the Association, including any insurance trustee, for the use and benefit of the individual Owners.

11.5.3 Beneficiary. In any policy covering the entire Project, each Owner and its Lender, if any, will be beneficiaries of the policy in an amount equal to the Owner's Allocated Interest in the Association.

11.5.4 Certificate of Insurance. Evidence of insurance will be issued to each Owner and Lender upon request.

11.5.5 Mortgage Provisions. Each policy will contain a standard mortgage clause or its equivalent and will provide that the policy may not be canceled or substantially modified without at least ten days' prior written notice to the Association and to each Lender.

11.5.6 Waiver of Subrogation. Each insurance policy will contain a waiver of the right of subrogation against Owners individually.

11.5.7 Act or Omission by Owner. Each insurance policy will provide that the insurance is not prejudiced by any act or omission of any Owner.

11.5.8 Disbursement of Proceeds. Proceeds of insurance policies will be disbursed promptly to repair the damages. Any proceeds remaining thereafter will be placed in the general funds of the Association.

11.5.9 Special Endorsements. Each policy will also contain or provide those endorsements commonly purchased by other Associations in similarly situated first-class subdivisions in the County, including an agreed-amount endorsement; an inflation guard endorsement (when it can be obtained); a building ordinance or law endorsement, if the enforcement of any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; a steam boiler and machinery coverage endorsement, if the Project has any central heating or cooling.

11.5.10 Individual Property Insurance Limited. Each Owner will have the right to separately insure its Residential Unit and its personal property against loss by fire or other casualty. In addition, any improvements made by an Owner within its Residential Unit may be separately insured by the Owner, but the insurance must be limited to the type and nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and Lenders.

11.5.11 Deductible. The deductible on a claim made against the Association's property insurance policy will be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and if multiple parties are responsible, the loss will be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an element, risk, or peril beyond the control of the Residential Unit Owner, then the Association will be responsible for the deductible.

11.5.12 Adjusting Claims. The Board has the authority to adjust claims and, if the claim may be filed with the Residential Unit Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company.

12. DURATION AND AMENDMENT

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

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

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

13. EMINENT DOMAIN

13.1 Taking of a Unit. If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Area and Facilities are taken.

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

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

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

14. INTERPRETATION, CONSTRUCTION, AND APPLICATION

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

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

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

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

14.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a planned unit development and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by

law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

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

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

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

14.9 Notices. Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice by electronic means, including text message, email, or through the Association's website; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

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

In the event that any Owner desires to sell or otherwise Transfer title to the Owner's Unit, such Owner shall give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Association, the

transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of Assessments, notwithstanding the Transfer.

15. ATTORNEY FEES AND COSTS

15.1 Legal Costs Associated with Disputes with Owners.

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

15.1.2 Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

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

16. RESERVES

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

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

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

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

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

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

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

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

16.2 Exceptions for Limited Common Area and Service Area Reserves. The requirements set forth in Subsections 16.1.1 - .7 shall not apply to reserves, if any, for a Limited Common Area or Service Area.

17. GENERAL PROVISIONS

17.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any

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

17.2 No Liability of Officers.

17.2.1 To the fullest extent permitted by applicable law, the Released Person shall not be liable to any Owner, Occupant, the Association, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence. Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Project, including the transmission of any infectious disease or illness. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant, and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence of malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Project.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

17.2.2 To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (Utah Code Ann. §16-6a-101, et seq.), the Association shall indemnify the Released Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in Utah Code Ann. §16-6a-102(42)), including but not limited to, attorney fees, witness fees (including expert witness fees), costs, and litigation related expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having

served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Board), or any settlement of any such proceeding. The Board further may elect to indemnify any agent of the Association. Any Released Person shall be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association shall pay or reimburse reasonable expenses incurred by any such Person who was, is, or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Section 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Released Person in question to make the repayment referred to in such Section. This right of indemnification shall be in addition to, and not exclusive of, all other rights to which the Released Person to be indemnified may be entitled at law or otherwise.

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

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

17.5 Areas of Owner Responsibility. The multi-family Unit Owners shall have the obligation to provide interior maintenance of their Lot and Unit and the Limited Common Areas servicing each respective multi-family Lot and Unit unless such maintenance has been otherwise allocated to the Association as set forth herein or by a separate written instrument.

17.6 Maintenance Allocation Table. A maintenance allocation table is attached hereto as Exhibit C, and clarifies the maintenance allocation for the Association, single-family Owners, and multi-family Owners. Unless expressly assumed by the Association, all maintenance obligations shall be the responsibility of the Owners. In the event of a conflict between Section 5.2, this Section 17, and Exhibit C, then Exhibit C shall control.

17.7 Limited Common Area Improvements. Subject to the terms and conditions of this Declaration, Owners, at their sole cost and expense, may install Limited Common Area Improvements within the Limited Common Area appurtenant to their respective Unit, in accordance with the following requirements:

17.7.1 The Owner shall submit an application to the Board requesting that a portion of the Common Area and Facilities adjacent to the Unit be converted from Common Area and Facilities to Limited Common Area. The application shall include a plan showing the exact location of the Limited Common Area and a description of the proposed Limited Common Area Improvements to be placed thereon.

17.7.2 The Owner shall be solely responsible for all costs and expenses associated with or relating to such Limited Common Area Improvements, including, without limitation, all costs and expenses of installation, design, permits, insurance, construction, maintenance, repair, and replacement thereof, and the Limited Common Area and the Limited Common Area Improvements shall otherwise be considered part of the Unit for purposes of maintenance, repair, reconstruction, and insurance.

17.7.3 The Owner shall obtain the required approvals from the Board and comply with the requirements of Sections 8 and 9. Without limiting the discretion and authority of the Board, the Board may withhold approval for installation of Limited Common Area Improvements based upon any of the following factors:

(a) The Board has reason to believe that the Limited Common Area, patio, deck, or other supporting structure will not support the size or weight of the Limited Common Area Improvements. If the Board has such concerns, the Owner may overcome the same and obtain approval if the Owner, at the Owner's sole cost and expense, obtains and submits to the committee a written opinion from a licensed structural engineer providing the Board with reasonably satisfactory assurances that the Limited Common Area, patio, deck or other supporting structure will structurally support the proposed Limited Common Area Improvements;

(b) The proposed Limited Common Area Improvements has a color scheme that detracts from and is not reasonably consistent with the appearance and colors of the exteriors of the Units in the Project;

(c) The size of the proposed Limited Common Area Improvements is unusually large for the proposed location, such that it detracts from the consistency and aesthetic visual appeal of the Project; or

(d) There is a risk of damage or harm to person or property.

17.7.4 The Owner shall be responsible for ensuring that the Limited Common Area on which the proposed Improvement will be located will structurally support the proposed Improvement, and that the proposed Improvement will not jeopardize the structural integrity of the Limited Common Area or the Unit.

17.7.5 The Owner shall indemnify, hold harmless, and agree to defend the Released Parties from and against any and all Claims arising from or relating to the installation, use, presence, repair, or removal of the Limited Common Area Improvements.

17.7.6 The Owner, at its sole cost and expense, shall obtain and maintain adequate and appropriate insurance coverage relating to the Limited Common Area Improvements. The Association shall not have any responsibility to obtain any form of insurance coverage relating to the Limited Common Area Improvements.

17.7.7 If the Owner removes the Limited Common Area Improvements, the Owner shall be responsible for all costs of removal. The Owner shall restore the Limited Common Area or the Unit on which the Limited Common Area Improvements were located to its original condition, and shall pay for all costs and expenses relating to such restoration.

17.8 Variances. The Board of Directors, at its option and in extenuating circumstances, may grant variances from the Restrictions set forth in Declaration if the Board of Directors determines, in its discretion: (a) either that the Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial effect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Governing Documents. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Directors. No variance may be granted that is inconsistent with the Development Agreement, City ordinance, or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

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

17.10 Security. Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of

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

17.11 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

17.12 No Representations and Warranties and Disclaimers. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARMLAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

18. DECLARANT RIGHTS AND CONTROL

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

18.2 Right to Appoint the Board of Directors During Declarant Control Period. The Declarant shall have the right to appoint and remove all Directors during the Declarant Control Period. In the appointment of Directors, the Declarant shall not be bound by any qualifications for Directors in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Declarant Control Period ends. The

Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Board of Directors without appointing Directors pursuant to the rights granted in the Articles to the Declarant.

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

18.4 Declarant Retains All Rights and Authority During Declarant Control Period. During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers and authority of the Board without the Board of Directors appointment of Board members. During the Declarant Control Period, the Declarant may pre-approve plans and/or waive design review fees for a bulk-lot builder. Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, the Declarant shall have the discretion, without obligation, to hire a professional manager to manage the Project during the Declarant Control Period.

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

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

18.7 Reinvestment Fee and Assessment Exemption. The Declarant shall be exempt from any Reinvestment Fee and Assessments including any regular Assessment, Limited Common Area Assessment, Service Area Assessments, or Special Assessment.

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

Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

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

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

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

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

18.13 Facilities Open to the Public. The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks, and other neighborhood

areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Association or the Board of Directors may so designate at any time thereafter.

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

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

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

19. CONFLICT AND LITIGATION AVOIDANCE

NOTICE: Notwithstanding anything in this Declaration to the contrary, this Section 19 shall not limit, supersede, or override the Association's legal remedies or cure period(s) set forth in Section 7 of this Declaration related to an Owner's nonpayment of Assessment(s) or other monetary obligations set forth in the Declaration. The Association may immediately exercise any rights under Section 7 of this Declaration and exercise its remedies related to non-payment of Assessments or to enforce the terms and conditions of this Declaration.

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

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

19.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from contractors or subcontractors to the Association related to the construction of the Project ("**Association Warranties**" or an "**Association Warranty**"). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the contractors or subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

19.3 Owner Warranties. The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased ("**Owner Warranties**" or an "**Owner Warranty**"). The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties granted to any Owner and the Owner shall have no right to assign any rights of any kind arising under a warranty to the Association.

19.4 Limitation on Claims. Any Claims by the Association, the Board, or any Owner against Declarant or any building contractor and/or subcontractor for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach arising out of or related to the design or construction of the Common Area and Facilities, the sale of or conveyance of any portion of the Project, or this Declaration or any other agreement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law shall be commenced within two (2) years of substantial completion of the Common Area and Facilities. The Association, the Board, and the Owners waive all Claims not asserted within this time. This Section is expressly intended to set forth a period of repose enforceable under Section 78B-2-225(9) of the Utah Code and to reduce the periods of limitation and repose prescribed by Section 78B-2-225 of the Utah Code. Also, the Association, the Board, and the Owners waive all Claims for consequential damages, including but not limited to lost rents, rental expenses, loss of use, financing, stigma, and loss of reputation. To the extent the Association, the Board, and the Owners damages are covered by insurance or a third-party warranty, including but not limited to the Association Warranties or the Owner Warranties, the Association, the Board and the Owners waive all rights against Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees for damages. The Association, the Board, and the Owners agree that they shall not participate in any class action proceeding and that any Claims shall not be joined or consolidated with the Claims made by any other party, including any other Owner. In the event the Association, the Board, or an Owner does participate in any class action or joins or consolidates the Claims with the Claims of any other party, the Association, the Board, and the Owner understand that such action is a

material default under this Declaration and the Association, the Board or the Owner, as the case may be, shall thereby waive and generally and completely release any and all Claims whatsoever, known or unknown against Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees.

19.5 Waiver of Subrogation and Release. The Association and each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, a builder, a contractor, or a subcontractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by law, the Association and Owners hereby release Declarant and builder and contractors and subcontractors, their officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant, builder, contractor, or subcontractor, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, the contractor, and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

19.6 Waiver of Claims by Owner. Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, the contractor, and/or the subcontractors, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.

19.7 Waiver of Claims by Association. Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association or the Board or any officer of the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, a builder, and/or the contractor or any of their officers, directors, members, employees, or agents for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom other than arising from an Association Warranty.

19.8 Indemnification and Waivers by Association and Owners. The Association shall indemnify and defend the Declarant, the builder, and/or the contractor and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any Claims arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom, except to the extent covered by an Association Warranty. By purchasing a Unit, the

Owner specifically disclaims and releases the Declarant, the builder, and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledge and agree that the Association Warranties and the Owner Warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any Claims, litigation or legal proceedings asserted or related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder, and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees related to any such Claim) from any such Claim and to indemnify Declarant, the builder, the contractor, and/or the subcontractors from any liability arising therefrom.

19.9 Acceptance of Condition. Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Area and Facilities, and Limited Common Area and Limited Common Area "AS IS" and "WITH ALL FAULTS" with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims, and the Association and any Owner hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

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

19.10.1 If otherwise allowed by law notwithstanding the terms of this Declaration or if allowed in this Declaration, prior to the Association or any Owner (a "**Claimant**") initiating a Claim or making any demand or commencing any mediation, arbitration, or litigation (any "**action**") (other than Claims made solely upon an Association Warranty or an Owner Warranty against a contractor or subcontractor) against the Association (if applicable), a Declarant or any builder, contractor, or subcontractor involved in the original construction of the Project ("**Respondent**") (the Claimant and Respondent referred to herein being individually referred to as a "**Party**" or collectively referred to as the "**Parties**") shall notify each Respondent in writing ("**Notice**"), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- (c) A specific breakdown and calculation of any alleged damages;

- (d) A specific description of the Claims along with any supporting opinions, information, or other factual evidence upon which the Claims are based;
- (e) Photographs of any alleged condition, if applicable;
- (f) Samples of any alleged defective conditions or materials;
- (g) All efforts taken to avoid, mitigate, or minimize the Claims or any alleged damages arising therefrom;
- (h) The names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claims;
- (i) The proposed remedy;
- (j) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- (k) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

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

19.10.3 In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited by Section 20 below.

19.10.4 Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, in addition to the requirements and limitations set forth in Section 20 below, the Association shall:

19.10.4.1 Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable. The notice will also contain the following information:

(a) a disclosure/statement in bold and upper-case type and not less than 22-point font:

The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.

(b) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;

(c) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;

(d) a written statement of each Board member indicating that Person's position on the litigation;

(e) a copy of a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney (not compensated on a contingency fee basis) not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

(f) all terms of the agreement between the Association and the attorney or law firm proposed to prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and

(g) a detailed description of the alleged Claims against the Declarant and of all efforts by the Association to resolve those Claims prior to commencing any action, and a statement describing any demands, notices, offers to settle, or responses to offers to settle made either by the Association or the Declarant or the builder, contractor or subcontractor, if applicable.

19.10.4.2 Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

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

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

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

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

19.10.8 The Association, the Board, any officer of the Association, and the Owners agree that any Claims or Actions, the subject matter of any proceeding, and the results of any proceeding, including any settlement, shall be confidential and not disclosed to any other person or entity, including any other Owner, other than (a) in confidence with its own legal, financial, insurance or tax professionals, (b) in necessary communication with appropriate federal, state or local tax authorities, (c) to any person necessary to perform or satisfy the award, or (d) to any other person as may be required to comply with a subpoena, court order or legal process;

provided, however, that Declarant shall be afforded a reasonable opportunity after written notice to object to the same. The Association, the Board, the officers of the Association, and the Owners, as the case may be, shall advise any legal, financial, insurance, or tax professional to whom such party discloses any confidential information or information about the Claims and/or Actions and any settlement or award that such information as permitted herein is to be held in confidence.

19.10.9 In addition to the requirements set forth in this Section 19 and Section 20 below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Declarant (if during the Declarant Control Period) and a vote of seventy-five percent (75%) of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

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

20 MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT

In addition to the requirements and procedures set forth in Section 19.10.4 above, the Association and each Owner are deemed to have accepted and agreed to comply with the terms of this Section.

20.1 Any and all Claims, controversies, breaches, or disputes (each a "**Dispute**") involving the Declarant or any affiliate of the Declarant, and any Owner or the Association (individually referred to as a "**Party**" or collectively referred to as the "**Parties**") arising out of or related to this Declaration, the Units, the sale of a Unit, or any transaction related thereto, whether such Dispute is based on contract, tort, statute, or in equity, including, without limitation, any Dispute over: breach of contract, negligent or intentional misrepresentation or fraud, nondisclosure, breach of any alleged duty of good faith and fair dealing, allegations of latent or patent construction defects, breach of any fiduciary duty, or any other matter arising out of or related to the interpretation of any term or provision of this Declaration, sales agreement, or otherwise, shall be arbitrated pursuant to the Federal Arbitration Act (9 U.S.C. §1, et seq.) ("**FAA**") and subject to the procedures set forth in Sections 19.

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

procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

20.3 The following are general arbitration provisions:

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

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

20.3.1.2 This Section 20.3 shall inure to the benefit of, and be enforceable by, the Declarant, affiliates of the Declarant, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom the Association or Owner contents is responsible for any alleged defect in or to the Project.

20.3.1.3 In the event any dispute is submitted to arbitration, each Party shall bear its own attorney fees and costs (including expert costs) for the arbitration, unless the arbitrator orders otherwise in accordance with the terms of Section 15.

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

20.3.1.5 The participation by any party in any judicial proceeding concerning this Section 20.3 or any matter arbitration-able hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 20.3. Attorney fees and costs shall be borne pursuant to Section 15 above.

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

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

20.3.1.8 If any provision of this Section 20.3 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

20.3.1.9 All parties governed by this Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 20.3 decided in a court or by a jury trial.

20.4 Landowners. All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Section 20.4.

21 HUD APPROVAL

The Declarant and the Association desire that the Project shall become and remain an approved project by the U.S. Department of Housing and Urban Development ("**HUD**") and the Federal Housing Administration ("**FHA**"). It is acknowledged that the requirements for approval by HUD and FHA may change over time. In the event of any conflict between the terms and conditions of the HUD and/or FHA approval guidelines for the Project, the terms and conditions of this Declaration and the Governing Documents shall be modified to be in compliance with the then existing requirements of FHA and HUD subject to the Act and any applicable laws. In the event of any conflict between the Act (and any applicable laws), the Declaration, and any HUD and/or FHA approval guidelines, the Act (and any applicable laws) shall control and govern. Notwithstanding the above, the Declarant during the Period of Administrative Control or at least sixty-seven percent (67%) of the total voting interest of the Owners at a meeting of the Association may modify this provision whereby the Declaration and other Government Documents shall no longer be subject to the then existing requirements of FHA and HUD.

[Remainder of page left intentionally blank. Additional pages follow]

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

DATED as of the 15th day of May, 2025.

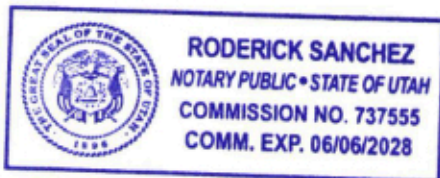
DECLARANT

Flint Acres, LLC, a Utah limited liability company

By: Gregory S. Nelson
Name: Greg Nelson
Title: Authorized Signer

STATE OF UTAH)
 : ss
COUNTY OF Davis)

On the 15 day of May, 2025, personally appeared before me Gregory S. Nelson, as signer of the foregoing instrument, who duly acknowledged to me that he executed the same, as authorized signer of Flint Acres, LLC, a Utah limited liability company.



Roderick Sanchez

Notary Public

Exhibit A

Legal Description of the Property

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF THE UTAH TRANSIT AUTHORITY PROPERTY, SAID POINT BEING 256.49 FEET SOUTH 89°13'14" EAST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33, 653.59 FEET NORTH 0°17'56" EAST AND 131.45 FEET NORTH 34°24'24" WEST FROM THE WEST QUARTER CORNER OF SECTION 33, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; RUNNING THENCE NORTH 34°24'24" WEST, 154.31 FEET ALONG SAID EAST LINE TO THE SOUTHWEST CORNER OF FLINT MEADOW SUBDIVISION AS SHOWN ON THE OFFICIAL PLAT THEREOF ON FILE AT THE OFFICE OF THE DAVIS COUNTY RECORDER; THENCE NORTH 49°38'51" EAST, 718.30 FEET ALONG THE SOUTH BOUNDARY LINE OF SAID FLINT MEADOW SUBDIVISION TO THE SOUTHWEST CORNER OF THE LARRY AND CLAIRE HARRIS PROPERTY; THENCE ALONG THE SOUTH BOUNDARY LINE OF SAID HARRIS PROPERTY THE FOLLOWING TWO (2) COURSES: 1) NORTH 50°12'15" EAST, 57.98 FEET, 2) NORTH 48°31'15" EAST, 21.82 FEET; THENCE SOUTH 22°19'49" EAST, 102.75 FEET TO THE BEGINNING OF A 1,011.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THENCE ALONG SAID CURVE 127.86 FEET, THROUGH A CENTRAL ANGLE OF 07°14'45" (CHORD BEARS NORTH 59°31'42" EAST, 127.77 FEET) TO THE WESTERLY LINE OF FLINT STREET; THENCE ALONG SAID FLINT STREET SOUTH 22°19'50" EAST, 55.18 FEET TO THE BEGINNING OF A 956.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE ALONG SAID CURVE 152.02 FEET, THROUGH A CENTRAL ANGLE OF 09°06'40" (CHORD BEARS SOUTH 58°20'07" WEST, 151.86 FEET); THENCE SOUTH 22°19'49" EAST, 225.26 FEET; THENCE SOUTH 67°40'11" WEST, 40.18 FEET; THENCE SOUTH 22°19'49" EAST, 7.95 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF KAYSVILLE NEIGHBORHOOD CENTER SUBDIVISION; THENCE ALONG SAID NORTHERLY BOUNDARY SOUTH 67°40'11" WEST, 663.14 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 206,979.74 SQ. FT. OR 4.752 ACRES, MORE OR LESS.

Exhibit B

Bylaws

**BYLAWS
OF
THE RESIDENCES AT FLINT ACRES
A PLANNED UNIT DEVELOPMENT**

**ARTICLE 1)
DEFINITIONS**

1.01 Declaration.

As used herein, "Declaration" means the Declaration of Covenants, Conditions, and Restrictions, and Reservations of Easements for the Residences at Flint Acres, as the same may be amended from time to time, recorded in the Official Records of Davis County, Utah.

1.02 Other Definitions.

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Declaration.

**ARTICLE 2)
OFFICES**

The Association is a Utah nonprofit corporation, with its principal office located at 172 N. East Promontory, Suite 275, Farmington, Utah 84025.

**ARTICLE 3)
VOTING, QUORUM, AND PROXIES**

3.01 Voting.

Votes shall be allocated as set forth in Article 3 of the Declaration.

3.02 Quorum.

Except as otherwise required by law or by the Articles, the presence in person or by proxy of Owners entitled to vote more than thirty-five percent (35%) of the total votes of the Owners shall constitute a quorum.

3.03 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Owner or his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy.

3.04 Majority Vote.

At any meeting of the Owners, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Owners, unless the vote of a greater number is required by law, the Articles, the Declaration, or these Bylaws.

ARTICLE 4)
ADMINISTRATION

4.01 Annual Meeting.

The annual meeting of the Owners shall be held at a time designated by the Board of Directors in the month of November in each year, or at such other date designated by the Board of Directors, beginning with the year 2025, for the purpose of appointing Directors and for the transaction of such other business as may come before the meeting. Notwithstanding the foregoing, to the fullest extent permitted by law, the Association shall not be required to arrange for and conduct an annual meeting of the Owners during the Declarant Control Period.

4.02 Special Meetings.

Special meetings of the Owners, for any purpose, unless otherwise prescribed by statute, may be called by the president or by a majority of the Directors and shall be called by the president at the request of Owners entitled to vote twenty percent (20%) or more of the total votes of all Owners.

4.03 Place of Meeting.

The Board of Directors may designate the Association's principal offices or any place within Davis County, Utah, as the place for any annual meeting or for any special meeting called by the Board of Directors.

4.04 Notice of Meeting.

Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each Owner entitled to vote at such meeting not less than ten nor more than fifty days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Board of Directors may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

4.05 Informal Action by Owners.

Any action required or permitted to be taken at a meeting of the Owners may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. Such consent shall have the same force and effect as a unanimous vote of the Owners.

ARTICLE 5)
DECLARANT CONTROL

Declarant shall be entitled to control the Association as set forth in Article 7 of the Declaration.

ARTICLE 6)
BOARD OF DIRECTORS

6.01 Number and Election of Directors.

Directors shall be appointed, elected, and removed as set forth in Article 4 of the Declaration.

6.02 Resignations; Vacancies.

Any Director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and,

unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Other than with respect to a Director appointed by the Declarant during the Declarant Control Period, any vacancy occurring on the Board of Directors (by reason of resignation or death) may be filled by an election of the Owners pursuant to a Special Meeting or written resolution. A vacancy occurring on the Board of Directors created by the resignation or death of a Director appointed by the Declarant during the Declarant Control Period shall be filled by the Declarant appointing a new Director. A Director elected to fill a vacancy shall hold office until the next annual meeting of the Owners and until his successor is duly elected and qualified.

6.03 Regular Meetings.

Regular meetings of the Board of Directors may be held without call or formal notice at such places within or outside the State of Utah, and at such times as the Board of Directors from time to time by vote may determine. Any business may be transacted at a regular meeting. The regular meeting of the Board of Directors for the election of Officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Owners, or any special meeting of Owners at which a Board of Directors is elected.

6.04 Special Meetings.

Special meetings of the Board of Directors may be held at any place within the State of Utah or by telephone, provided that each Director can hear each other Director, at any time when called by the president, or by two or more Directors, upon the giving of at least three days' prior notice of the time and place thereof to each Director by leaving such notice with such Director or at such Director's residence or usual place of business, or by mailing it prepaid and addressed to such Director at such Director's address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the Directors shall be required.

6.05 Quorum.

A majority of the number of Directors fixed by these Bylaws, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the Directors in attendance shall, except where a larger number is required by law, by the Articles, or by these Bylaws, decide any question brought before such meeting.

6.06 Waiver of Notice.

Before, at, or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of

notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.07 Informal Action by Directors.

Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Directors.

ARTICLE 7)
OFFICERS AND AGENTS

7.01 General.

The Officers of the Association shall be a president (who shall be chosen from among the Directors), one or more vice presidents, a secretary, and a treasurer. The Board of Directors may appoint such other officers, assistant officers, committees, and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board of Directors. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent, or employee are not prescribed by the Bylaws or by the Board of Directors, such Officer, agent, or employee shall follow the orders and instructions of the president.

7.02 Removal of Officers.

The Board of Directors may remove any Officer, either with or without cause, and elect a successor at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

7.03 Vacancies.

A vacancy in any office, however occurring, shall be filled by the Board of Directors for the unexpired portion of the term.

7.04 President.

The president shall be the chief officer of the Association. The president shall preside at all meetings of the Association and of the Board of Directors. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents, and employees. The president of the Association is designated as the

Officer with the power to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

7.05 Vice Presidents.

The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board of Directors. In the absence of the president, the vice president designated by the Board of Directors or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

7.06 Secretary.

The secretary shall:

- (a) keep the minutes of the proceedings of the Owners Meetings and of the Board of Directors Meetings;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration, and as required by law;
- (c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board of Directors;
- (d) maintain at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each Mortgagee; and
- (e) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Board of Directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

7.07 Treasurer.

The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board of Directors. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls, and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Board of Directors, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Board of Directors, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board of Directors, conditioned upon the faithful performance of his duties

and for the restoration to the Association of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Board of Directors or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

ARTICLE 8)
EVIDENCE OF OWNERSHIP, REGISTRATION OF
MAILING ADDRESS, AND LIEN HOLDERS

8.01 Proof of Ownership.

Except for those Owners who initially contracted to purchase a Unit from the Declarant, any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Unit. Such copy shall remain in the files of the Association. An Owner shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Owners unless this requirement is first satisfied.

8.02 Registration of Mailing Address.

If a Unit is owned by two or more Owners, such Owners shall designate one address as the registered address required by the Declaration. The registered address of an Owner or Owners shall be furnished to the secretary of the Association within ten days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit.

8.03 Liens.

Any Owner who mortgages or grants a deed of trust covering his Unit shall give the Association written notice of the name and address of the Mortgagee and shall file true, correct, and complete copies of the note and security instrument with the Association.

8.04 Address of the Association.

The address of the Association shall be 172 N. East Promontory, Suite 275, Farmington, Utah 84025. Such address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

ARTICLE 9)
SECURITY INTEREST IN MEMBERSHIP

Owners shall have the right irrevocably to constitute and appoint a mortgagee their true and lawful attorney-in-fact to vote their Membership in the Association at any and all meetings of the Association and to vest in the Mortgagee any and all rights, privileges and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by the Mortgagee with the secretary of the Association. A release of the Mortgage covering the subject Unit shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the Mortgagee the duties and obligations of an Owner.

ARTICLE 10)
AMENDMENTS

10.01 By Directors.

Except as limited by law, the Articles, the Declaration, or these Bylaws, the Board of Directors shall have power to make, amend, and repeal the Bylaws of the Association at any regular meeting of the Board of Directors or at any special meeting called for that purpose at which a quorum is represented. If, however, the Owners shall make, amend, or repeal any Bylaw, the Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action.

10.02 By Owners.

Subject to any rights conferred upon first Mortgagees in the Declaration, the Owners may, by the vote of the holders of at least sixty-seven percent (67%) of the votes of the Owners, unless a greater percentage is expressly required by law, the Articles, the Declaration, or these Bylaws, make, alter, amend, or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

ARTICLE 11)
MISCELLANEOUS

11.01 Fiscal Year.

The fiscal year of the Association shall be such as may from time to time be established by the Board of Directors.

11.02 Other Provisions.

The Declaration contains certain other provisions relating to the administration of the Project, which provisions are hereby incorporated herein by reference.

<< >>

Exhibit C

Maintenance, Repair, and Replacement Allocation

Improvement	Multi-Family Owner	Association	Notes
A/C Pad & Unit	X		
Address Numbers	X		Subject to Board approval upon replacement.
Attic	X		
Cable/Satellite TV	X		Subject to Board approval.
Ceiling	X		
Circuit Breakers for Unit	X		
Common Area Amenities		X	
Door and Door Frames (Exterior)	X		Subject to Board approval upon replacement.
Door and Door Frames (Interior)	X		
Door Hardware/Doorbell	X		Subject to Board approval upon replacement.
Drains - Unit and Limited Common Area (Patio/Porch)	X		
Dryer Vent	X		
Electrical Wiring/Panels	X		
Exterior Wall Finishes		X	
Fencing - Project Perimeter		X	
Fencing - Lots and Limited Common Areas	X		Subject to Board/Board approval.
Fireplace, Flue, and Vent Pipes - Cleaning and Repair	X		
Floor coverings	X		
Foundation - Structural		X	
Foundation - Cosmetic	X		
Furnace	X		
Garage Doors - Repair and Replacement	X		Subject to Board/Board approval.
Gas Pipes (Meter to Unit interior)	X		
Hose Bib/Faucet/Spigot	X		
Hot Water Heater	X		
Insurance - Property (attached buildings)		X	
Insurance - HO6 Policy	X		
Insurance - Loss Assessment	X		
Insurance - Deductible	X	X	Assess to Owners pro-rata according to losses. HOA deductible is Owner's responsibility.
Irrigation Lines/Heads - Common Area (Front Yards)		X	
Landscaping - Common Areas		X	
Landscaping - Owner Maintained Areas/Limited Common Areas	X		

Lights - Exterior (Porch, Driveway, Garage, Wall Pack (Fixtures & Bulbs))		X	
Limited Common Area - Patios, Porches, and Decks (Repair and Replacement)	X		
Limited Common Area – Driveways		X	
Mailbox and Stand/Structure	X		
Mailbox Lock and Key	X		
Paint - Exterior Walls and Trim		X	
Paint - Exterior Doors and Garage Doors	X		
Paint - Interior	X		
Patio Slab	X		
Pest Control - Interior	X		
Phone Lines	X		
Playgrounds and Open Space		X	
Plumbing Valves and Pressure Regulators	X	X	Owner: point of connection/meter to Unit. Association: before point of connection/meter.
Plumbing Main Line (including, without limitation, the water meter and associated infrastructure identified in Section 10.1.3 above)	X	X	Owner: point of connection/meter to Unit. Association: before point of connection/meter.
Plumbing Leak	X	X	Owner: point of connection/meter to Unit. Association: before point of connection/meter.
Plumbing Clogage	X	X	Owner: point of connection/meter to Unit. Association: before point of connection/meter.
Plumbing Interior Pipes	X	X	Owner: point of connection/meter to Unit. Association: before point of connection/meter.
Rain Gutters - Cleaning, Repair, and Replacement		X	
Rain Gutters - Drains away from Building		X	
Roof Repair and Replacement		X	
Screen Doors	X		Subject to Board/Board approval.
Sewer Pipes and Utilities (Single Unit)	X		
Sewer Pipes and Utilities (Serving Multiple Units)		X	Unless otherwise handled by Davis County or others.
Sidewalks and Paths on Common Areas		X	

Sliding Glass Doors	X		
Snow Removal - Limited Common Areas, Driveways, Porches and Sidewalks on Lots	X		
Snow Removal - Private Roads and Common Area Sidewalks		X	
Storm Drains		X	
Street Lights		X	
Streets - Private		X	
Termites, Pests, Rodents, Insects, etc.	X		
Trash	X		
Vent Covers - Exterior		X	
Wall - Load Bearing, Interior Wall	X		
Wall - Partition Interior Wall	X		
Water - Culinary or Owner Maintained Landscaping	X		
Water - Common Areas		X	
Weather Stripping	X		
Windows - Glass, Screens, Frames, Boxes, and Wells	X		Subject to Board/Board approval