

When Recorded Return To:
Castlewood- Indian Summer, LLC
c/o Jeffrey A. Duke
6740 South 1300 East
Salt Lake City, Utah 84121

Ent 470522 Bk 1271 Pg 1676-1726
Date: 06-NOV-2019 3:42:18PM
Fee: \$57.00 Check Filed By: TC
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
For: CASTLEWOOD INDIAN SUMMER LLC

Tax Parcel ID Nos.: See Exhibit A

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR INDIAN SUMMER SUBDIVISION

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR INDIAN SUMMER SUBDIVISION (“**Declaration**”) is made by Castlewood- Indian Summer, LLC, a Utah limited liability company (“**Declarant**”), as of the date set forth on the signature page below.

RECITALS

A. The Declarant is the owner of certain real property located in the City of Midway (“**City**”), Wasatch County, Utah (“**County**”), more particularly described on Exhibit A attached hereto (“**Property**”). Declarant is developing the Property as a residential community to be known as Indian Summer Subdivision (“**Project**”). The Project shall be subdivided into individual lots for residential units, streets and certain common areas and facilities.

B. The Indian Summer Homeowners Association (“**Association**”) has been, or will be, incorporated as a Utah non-profit corporation to act as a homeowners association with the powers of managing and maintaining the Common Areas in the Project, administering and enforcing this Declaration, and assessing and collecting from Owners a share of the costs for maintaining and repairing any and all Common Areas within the Project and performing such other acts as are provided for in this Declaration, the Association’s Bylaws, statute, or which generally benefit the Property.

C. Declarant has adopted the covenants, conditions, restrictions, easements, servitudes, and limitations set forth in this Declaration (collectively, the “**Covenants**”) for the purpose of:

- i. Helping to ensure uniformity in the development of the Lots;
- ii. Establishing a common scheme and plan for the possession, use, enjoyment, repair, maintenance, and improvement of the Project.
- iii. Protecting long-term property values and a desired quality of life in the Project;
- iv. Facilitating the initial sale of Lots by the Declarant, its successors and assigns, and subsequent sale by the individual Owners of Lots in the Project;
- v. Maintaining the Common Areas located within the Project in accordance with the Covenants and with City standards; and
- vi. Providing for mandatory dispute resolution procedures and requirements to avoid litigation, as set forth in Article 13 of this Declaration.

NOW, THEREFORE, the Declarant does hereby establish the Covenants set forth herein and does hereby declare that the Property, and all Lots within the Project, shall be held, sold, conveyed, leased, and rented subject to, and shall be encumbered by, the Covenants set forth below which shall be run with the Land and be binding on all persons or entities now or hereafter having or claiming any right, title, or interest in the Property, or any of the Lots within the Project.

ARTICLE 1

DEFINITIONS

The plural of any word defined in this Declaration shall have the same meaning as the singular and vice versa. The following words when used in this Declaration shall have the following meanings (other terms may be defined elsewhere in this Declaration):

1.1 "ACC" means the Architectural Control Committee, identified in Section 8.1 of this Declaration and its subparts, which the Declarant may establish during the Period of Declarant's Control.

1.2 "Act" means the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*, as amended from time to time.

1.3 "Assessment" means any of the fees, assessments, or payments required to be made by Owners of Lots within the Project, including the annual assessments, supplemental assessments, and special assessments, as more particularly described in Article 4 of this Declaration.

1.4 "Association" means the Indian Summer Homeowners Association, a Utah non-profit corporation.

1.5 "Bylaws" means the *Bylaws of the Indian Summer Homeowners Association*. A copy of the Bylaws is attached hereto as **Exhibit C**.

1.6 "Board" means the Board of Directors of the Association.

1.7 "City" means the City of Midway, a political subdivision of the State of Utah.

1.8 "Common Areas" means the portions of the Project, including community improvements, which are intended for common use by all the Owners or which are held or maintained by the Association for the benefit of the Owners. Common Areas are not included within the Lots and are not dedicated or reserved for public use. The Common Areas are more particularly discussed in Section 5.1 of this Declaration.

1.9 "Common Expenses" means all sums lawfully assessed against the Lots or the Owners by the Association; all expenses of administration, maintenance, repair or replacement of the Common Areas; all expenses of management of the Association; all expenses allocated by the Association among the Owners; all expenses agreed upon as common expenses by the Association; and all expenses declared common expenses by this Declaration.

1.10 "County" means Wasatch County, Utah.

1.11 "County Recorder's Office" means the Wasatch County office which maintains an official record of deeds and real property records and accepts such documents for recordation pursuant to Utah Code § 17-21-1.

1.12 "Covenants" means every covenant, condition, restriction, easement, and limitation set forth in this Declaration.

1.13 "Declarant" means Castlewood- Indian Summer, LLC, a Utah limited liability company, and any assign or successor that acquires Declarant's interest in the Property and takes a written assignment of Declarant's rights. The term Declarant shall NOT mean a Commercial Builder, as defined in Section 4.8 of this Declaration, any person or entity who acquires one or more, but less than all, of the Lots from Declarant for the purposes of constructing Residences thereon, unless such person or entity also receives a written assignment of Declarant's rights.

1.14 "Declaration" means this *Declaration of Covenants, Conditions and Restrictions for Indian Summer Subdivision* as it may be amended from time to time.

1.15 "Design Guidelines" means the design standards and architectural guidelines which Declarant may adopt and which are applicable to the Project.

1.16 "First Mortgage" means a recorded Mortgage or consensual lien granted by the Owner which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.17 "First Mortgagee" means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.

1.18 "Improvement" means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Residence, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction and also includes landscaping.

1.19 "Lot" means a subdivided and individually numbered residential parcel within the Project as designated on the Plat Map recorded with the County Recorder's Office. The term Lot includes any Residence or other Improvement constructed thereon.

1.20 "Member" means a person or entity who is a member of the Association.

1.21 "Mortgage" means any mortgage, deed of trust, or other document pledging any portion of a Lot or interest therein as security for the payment of a debt or obligation.

1.22 "Mortgagee" means the mortgage or beneficiary identified in a Mortgage.

1.23 "Owner" means the person or entity vested with legal, record fee simple title to any Lot. If there is more than one record holder of legal title to a Lot, each shall be an Owner.

1.24 "Period of Declarant's Control" means the period of time during which Declarant shall have administrative control of the Association and the other rights and privileges as set forth in this Declaration. Following the recording of this Declaration, the Period of Declarant's Control shall continue until such time as Declarant sees fit to, by written notice, transfer administrative control of the Association to the Owners, but in no event shall the Period of Declarant's Control extend beyond the date which is one hundred twenty (120) days after one hundred percent (100%) of the Lots in the Project have been conveyed to individual residential purchasers (which shall not include entities affiliated with Declarant).

1.25 "Plat Map" means, collectively, the subdivision plat maps for the Project filed with the County Recorder's Office or proposed to be filed with the County Recorder's Office, and any plat incorporating additional real estate into the Project. A copy of the Plat Map current as of the date of this Declaration is attached hereto as **Exhibit B**. Declarant reserves the right to modify the terms of any revised or amend the Plat Map for the Project. Any such revisions or amendments recorded in the County Recorder's Office shall be deemed the Plat Map for purposes of this Declaration.

1.26 "Project" means the residential community to be developed by Declarant on the Property.

1.27 "Property" means the real property situated in Wasatch County, State of Utah, as more particularly described in **Exhibit A**, against which this Declaration is recorded and any real property which may be hereafter become subject to the Covenants set forth herein by virtue of a of declaration of inclusion.

1.28 "Residence" means the residential dwelling structure on a Lot within the Project.

1.29 "Rules and Regulations" means the rules, regulations, and restriction which are not inconsistent with the Act, this Declaration, or the Bylaws, duly adopted by the Board.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Project.** The Property comprising the Project, as identified in **Exhibit A**, together with any additional real property added to the Project, as provided herein, is, and henceforth shall be, held, occupied, transferred, sold, and conveyed subject to the Covenants set forth in this Declaration. The Project is **NOT** a cooperative. Currently, **NO PORTION** of the Project is subject to the Condominium Ownership Act, Utah Code § 57-8-1, et seq. During the Period of Declarant's Control, no portion of the Project may become subject to the Condominium Ownership Act without Declarant's express written consent which Declarant may give or withhold in its sole discretion. After the Period of Declarant's Control, no portion of the Project may become subject to the Condominium Ownership Act without the written consent of all affected Owners and the approval of the Board.

2.2 **Covenants Run with the Land.** This Declaration, and the Covenants herein, shall run with the land and shall be binding on all persons or entities holding or taking title to any interest in the Property or any Lot therein, and all Owners shall hold or take title subject to this Declaration.

2.3 Applicability of the Act. Declarant hereby confirms and acknowledges that the Project and the Association are subject to the provisions of the Act with respect to items not addressed in this Declaration but covered by the Act.

2.4 Local Laws and Ordinances Applicable. In addition to the Covenants set forth in this Declaration, the Property and any Lot therein is subject to the Act and the local laws and ordinances of the City and County, including applicable building codes and zoning ordinances, now or hereafter in effect.

2.5 Enforcement of Covenants.

2.5.1 By the Association; Legal action or Fines. The Association, through its Board, shall have the right to enforce compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations adopted by the Board including, if the Board deems necessary, through legal action. Consistent with the terms of the Act, the Board may establish a schedule of reasonable fines to be imposed on non-complying Owners after appropriate notice has been provided to such Owners. The obligation to pay such fines imposed by the Association shall be a personal obligation of such Owner and shall also be secured by the Association's lien on such owner's Lot as provided in Section 4.6 of this Declaration. The Board may also suspend any services provided to an Owner who fails to comply, or whose Lot does not comply, with the Covenants set forth in this Declaration. The Board may also suspend voting rights or privileges related to Common Areas for non-compliance. Any costs associated with the Association's enforcement of this Declaration may be assessed to the non-complying Owner as a special assessment.

2.5.2 By an Owner. Any Owner aggrieved by another Owner's non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations adopted by the Board may commence an action seeking to enforce compliance with the same.

2.5.3 Injunction; Legal Fees. Under appropriate circumstances, the Association or an aggrieved Owner may seek a temporary restraining order or preliminary injunction to stop or prevent non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations adopted by the Board. In any such legal action, the prevailing party shall be entitled to an award of reasonable costs and attorney fees. In addition, the Association shall have all enforcement rights and remedies set forth in the Act as the same may be amended from time to time.

ARTICLE 3

ASSOCIATION AND MEMBERSHIP THEREIN

3.1 Association Membership. Each Owner is a member of the Association. Such membership automatically becomes affective by an Owner's acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed. By accepting a deed to a Lot, an Owner is deemed to have agreed to be bound by the Covenants, the Bylaws, and by such reasonable Rules and Regulations as may, from time to time, be established by the Association. Membership is mandatory for all Owners. When more than one person or entity is an Owner of a Lot, all such persons or entities shall be Members. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Lot, whether by conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of Utah. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation.

3.2 Transfer. Upon the transfer or conveyance of any Lot, the transferee or grantee shall become a Member, and the transferor or grantor shall immediately cease being a Member. The Board shall maintain a list of all Members and shall note each transfer of ownership on such list. Upon the transfer or conveyance of any Lot, the selling or transferring Owner shall promptly inform the Association of the name of the transferee or grantee. The Association, directly or through any Manager appointed pursuant to Section 3.7 of this Declaration, may charge a fee for providing payoff information requested in connection with financing, refinancing, or closing of an Owner's sale of such Owner's Lot, as provided for in Utah Code § 57-8a-106. The transfer fee shall be \$650.

3.3 Voting Rights. The Owner or Owners of each Lot shall be entitled to one (1) vote for each Lot owned. The one (1) vote for such Lot shall be exercised as they, among themselves, determine. Where a Lot is owned by more than one Owner, the vote of any one of them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Lot on any question or issue, the Owners of such Lot will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Lot. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed the number of Lots in the Project. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the votes cast with respect to such

matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

3.4 Meetings. Unless otherwise provided by this Declaration or by the Bylaws, all matters requiring a vote of the Members of the Association shall be decided at a meeting of the Members held for that purpose. Except in the case of an emergency or other situation which requires shorter notice, written notice designating the time and place of such meeting shall be provided to each Member no less than ten (10) or more than sixty (60) days in advance of a meeting. Other provisions for giving notice of such meetings, determining a quorum, and tallying votes shall be included in the Bylaws, or shall be established by the Board. In lieu of attending a meeting held for the purpose of exercising voting rights, Members may exercise such voting rights in writing or through a proxy, if designated in writing before the time for such vote. By attending a meeting where a vote is held, by exercising a vote in writing, or by designating a proxy, an Owner shall be conclusively deemed to have received adequate notice of such meeting or such vote.

3.5 Declarant Approval Required. Notwithstanding any other provision of this Declaration, during the Period of Declarant's Control all matters for which the Declaration or the Bylaws call for a vote of the Members of the Association may be decided solely by the Declarant with or without a meeting and with or without a vote of the Members. Any matters which are submitted to a vote of the Members during the Period of Declarant's Control will be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all such matters shall be submitted to a vote of the Members of the Association and shall be decided solely by the votes of the Members.

3.6 Board of Directors. The Board shall be the governing body of the Association. In addition to those set forth herein, the powers, rights, privileges, and duties of the Board shall be set forth in the Bylaws. During the Period of Declarant's Control, the Declarant shall appoint the members of the Board, which shall number no less than three (3) directors and not more than Seven (7) directors. After the Period of Declarant's Control, the members of the Board shall be chosen, removed, or replaced by the vote of the Members of the Association in accordance with the provisions of the Bylaws. Notwithstanding the foregoing, Declarant may, at Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Period of Declarant's Control. Such action shall not be deemed as a termination of the Period of Declarant's Control or a waiver of any of the rights of Declarant as provided herein.

3.7 Professional Management. The Association may carry out the functions required of it pursuant to this Declaration, the Bylaws, or the Rules and Regulations, to the extent such functions are properly delegable, by and through a professional manager ("**Manager**"). If a Manager is engaged, the Manager shall be an independent contractor and not an employee of the

Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by the Board, be authorized to perform any of the properly delegable functions or acts required or permitted or performed by the Association.

3.8 Bylaws. Nothing in the Association's Bylaws shall substantially alter, amend, or impair the rights and obligations of the Owners set forth in this Declaration.

3.9 Property. The Association may acquire and own real or personal property for the benefit of the Owners and may dispose of such property if allowed under this Declaration and the Bylaws. The maintenance, repair, and replacement of all property owned by the Association shall be a Common Expense.

3.10 Indemnification. To the fullest extent allowed by law, the Association shall indemnify and hold the following persons and entities harmless from and against any and all claims, costs, damages, expenses, injuries, liabilities or losses including, but not limited to, attorney fees, reasonably incurred by, or asserted against, such person or entity in connection with any action or proceeding of any sort in which such person is, or may be, a party or otherwise involved by reason of serving, or having served, in any capacity on behalf of the Association: (a) every director, officer, or member of the Board; (b) every member of the ACC; (c) every officer, director, employee, or agent of the Declarant; (d) every person serving as an employee of the Association. The right of indemnification set forth herein will continue regardless of whether such person or entity is still actively serving in the capacity at the time such claims or expenses are incurred or asserted. However, the right of indemnification will not apply to such claims or expenses which are determined by a court of competent jurisdiction, or an arbitrator in the case of claims subject to Article 13 of this Declaration, to be the result of fraud, criminal action, or willful misconduct on the part of such person or entity

3.11 Restriction on Sub-Associations. During the Period of Declarant's Control, no sub-association may be established for any portion of the Project without Declarant's express written consent, which Declarant may give or withhold in its sole discretion. After the Period of Declarant's Control, no sub-association may be established without the written consent of all affected Owners and the approval of the Board. In the event a sub-association is formed pursuant to this Section, all members of such sub-association will remain Members of the Association and have all obligations of Owners set forth herein. The establishment of such a sub-association will not impact any of the rights of the Association as provided herein.

ARTICLE 4

ASSOCIATION ASSESSMENTS

4.1 Covenant to Pay Assessments. The Owner of any Lot, excluding Declarant whose obligations regarding Assessments are set forth below, by accepting a Deed for said Lot, 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.

4.2 Nature of Assessments.

4.2.1 Association Expenses. The Common Expenses and all obligations of the Association, as identified in the Act, this Declaration, and the Bylaws, shall be funded through fees, annual assessments, supplemental assessments, and special assessments levied against the Lots.

4.2.2 Allocation of Common Expenses. The Common Expenses will be apportioned equally among, and assessed equally to, all Owners.

4.3 Types of Fees and Assessments. The Association may impose the following fees and assessments:

4.3.1 Annual Assessment. Each Owner shall pay an annual assessment for each Lot owned by such Owner, and a prorated portion of such annual assessment shall be due upon each Owner taking title to such Lot. The annual assessment shall be the Lot's share of the total annual amount necessary for the Association to perform all of its obligations, whether imposed by the Act, this Declaration, or the Bylaws. Without limitation, the annual assessment shall include each Lot's share of the Common Expenses including the cost to maintain and preserve the Common Areas, including insurance thereon, the amounts necessary to perform the Association's other maintenance obligations (including the Trimble Manor Land Drain Connection and System (defined below)), the amounts necessary to fund the Association's reserve fund in a manner consistent with the Act, the Association's administrative expenses, and the amount any obligations imposed on the Association by any applicable law, ordinances, or regulations, all of which shall be identified in the Association's budget. The annual assessment shall be fixed, and from time to time adjusted, by the Declarant during the Period of Declarant's Control and thereafter by the Board in accordance with the provisions of the Act. At a minimum, the Board or the Declarant shall review the annual assessment on an annual basis and make such adjustments as are necessary. The Declarant or the Board may require that the annual assessment attributable to each Lot be divided in twelve equal shares and paid in the form of a "monthly membership assessment," to be due and payable each month on a date fixed by the Board. Subject to the exemption for the Declarant set forth below, the amount of the annual assessment shall be fixed at a uniform rate for each Lot assessed and shall be a

portion of the Association's annual Common Expenses determined by dividing the total Common Expenses by the number of Lots to which assessments are imposed. As additional Lots are constructed or conveyed to purchasers, the Declarant or the Board shall adjust the amount of the annual assessment accordingly. The annual assessment has been initially established as \$288 per year per lot.

4.3.2 Supplemental Assessment. In the event the annual assessment is insufficient to meet the Association's regular recurring obligations in any given fiscal year, the Declarant during the Period of Declarant's Control or the Board thereafter may assess a supplemental assessment against each Lot for a share of any supplemental amount necessary to meet the Association's annual obligations. Each Lot's share of a supplemental assessment shall be determined in the manner for annual assessments as set forth in Section 4.3.2 of this Declaration.

4.3.3 Special Assessment. The Declarant may, during the Period of Declarant's Control, assess a special assessment to pay for special, non-recurring, or emergency expenses of the Association or the Project which exceed the Association's annual budget for the fiscal year during which such expenses arise, including but not limited to expenses related to damage to the Project, unanticipated repairs, and Common Area improvements. A special assessment may be payable over time in appropriate circumstances. After the Period of Declarant's Control, such a special assessment may be imposed by the Board, but only with the affirmative vote of fifty-one percent (51%) of the total number of Owners in the Association. Any special assessment shall represent the pro-rata share of such expenses attributable to the Lot or Lots benefited by such expenses, or to which such expenses apply. In the event such expenses apply to or benefit less than all the Lots in the Project, the Declarant or Board may impose a special assessment against less than all of the Lots in the Project. Without limiting the foregoing, if the Association elects to perform maintenance on any Residence as provided in Article 7 the costs incurred in performing such maintenance will be a special assessment attributable to the affected Owner.

4.3.4 Capital Improvements. Notwithstanding any other provision of this Declaration, after the Period of Declarant's Control, the Association shall not make any Capital Improvement, as defined below, without the authorization of fifty-one percent (51%) of the Owners voting at a meeting called for the purpose of proposing such Capital Improvement. For purposes of this Section, a "Capital Improvement" shall mean the installation of new Improvement located within a Common Area or other portion of the Project owned or managed by the Association, for which funds are not otherwise identified in the Association's budget. If approved as provided in this Section, the cost of a Capital Improvement may be assessed to the Lots as a special assessment.

4.3.5 The initial buyer/Owner of a Lot from the Declarant, and each subsequent Owner of a Lot (the "New Owner"), shall be obligated to pay the Association a Reinvestment Fee, payable at the closing of each such Owner's purchase of the Lot. If not paid at the closing of such Owner's purchase of a Lot, the Reinvestment Fee shall be due and payable to the Association within the first calendar month of new ownership of a Lot. The initial amount of the Reinvestment Fee shall be \$650.00. The Reinvestment Fee shall be dedicated to meeting the Association's obligations and benefitting the Property and may be used for any Association purpose allowed by law. The amount of the Reinvestment Fee shall be fixed and, from time to time adjusted, by the Declarant during the Period of Declarant's Control and thereafter by the Board. The Association shall have a lien against the Lot of the New Owner to secure payment and collection of the Reinvestment Fee. The lien securing payment of the Reinvestment Fee shall be enforceable in the same manner and in all respects as the lien securing payment of assessments as provided in the other provisions of this Declaration. The obligation to pay the Reinvestment Fee shall be a personal and continuing obligation of the New Owner, regardless of whether the New Owner acquired title to the Lot by regular conveyance, pursuant to a foreclosure sale (judicial or non-judicial), by inheritance or probate, or otherwise. The provisions of this Section 4.3.5 shall be interpreted and enforced in a manner that complies with the provisions pertaining to "reinvestment fee covenants" in Sections 57-1-46 et seq. of the Utah Code, as the same may be amended. The provisions of this Section 4.3.5 are intended to run with the land of the Lots, and to be binding upon all successors and assigns, and inure to the benefit of the Association

4.4 Budget. The annual assessment shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 of each year, provided that for the first fiscal year shall begin on the date of the conveyance of the first Lot by Declarant. On or before December 1 of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, the anticipated receipts (if any), and any deficit or surplus from the prior operation period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. On or before December 1 of each year, the Board shall also notify each Owner of the amount of the following fiscal year's annual assessment for each Lot owned by such Owner.

4.5 Reserve Account. The Association must comply with the terms and provisions of the Act relating to a reserve analysis and the funding of a reserve account for those Common Areas of the Project, if any, for which the Association is required to maintain a reserve account. Any reserve account will be funded by assessments imposed in accordance with the terms of this Article 4.

4.6 Lien and Personal Obligation. The fees and assessments identified above, together with any applicable late payment fees, interest, costs, and reasonable attorney fees, and any other financial obligations owed to the Association as permitted under this Declaration, shall be a charge and lien against the Lot against which such assessment is imposed. In addition, each Owner's obligation to satisfy such assessments and obligations is an independent and personal covenant of such Owner, with all amounts being due and payable without setoff or deduction when assessed. In the event of a failure to pay such assessments, or other default, the Association may pursue an action against the Owner to collect the assessment and enforce the lien against a Lot by foreclosure in the manner set forth below. The Association's lien shall be a continuing lien on each Lot and shall be subordinate to a First Mortgage, where the Mortgagee is a lender who loaned funds for the purchase of the Lot, and shall also be subordinate to a lien for property taxes or other public assessments, but the Association's lien shall be superior to all other liens, charges, or encumbrances of any sort which shall hereafter arise or be imposed on any Lot. The Association's lien shall not be affected by the sale or transfer of any Lot.

4.7 Statement and Evidence of Payment. Upon receipt of a written request by an Owner, or any other person or entity, the Board shall within a reasonable time issue to such Owner or other person or entity a written certificate stating, as applicable, (i) that all annual, special, and supplemental assessments (plus any applicable costs or fees) have been paid with respect to any specified Lot as of the date of the certificate, or (ii) if all assessments have not been paid, the amount of such outstanding annual, special, or supplemental assessments (plus any applicable costs or fees) due and payable as the date of the certificate. The Board may make a reasonable charge for issuing such certificates. Any such certificate, when issued as provided herein, shall be conclusive and binding with respect to any matter therein stated.

4.8 Exemption for Declarant and Commercial Builders. No assessment for a Lot owned by the Declarant or Declarant's affiliates shall be imposed until such Lot is conveyed to a subsequent purchaser. After the date a Lot is conveyed to a purchaser, the full amount of the assessment attributable to such Lot shall be imposed and collected from the new Owner in the manner set forth in this Declaration. Any Lot transferred to a builder or developer other than Declarant who holds two (2) or more Lots within the Project for the purpose of constructing homes for sale to residential customers ("**Commercial Builder**") will be partially exempt from assessments according to the terms of this Section. Immediately upon transfer from the Declarant the Commercial Builder will be responsible to pay twenty-five percent (25%) of any assessment attributable to each Lot owned by such Commercial Builder. The Commercial Builder's exemption will expire, and the full assessment attributable to such Lots will be come due and payable, upon the first to occur of twelve (12) months following the transfer of such Lot from Declarant or a certificate of occupancy for a Residence on the Property being issued. In the event that assessments collected from Owners are insufficient to meet the Association's obligations, then notwithstanding the foregoing exemptions Declarant and any Commercial Builder will be obligated to contribute,

pro-rata based on the number of Lots owned, in order to offset such shortfall; provided that the required contribution shall not exceed the entire amount that would have been payable by Declarant or a Commercial Builder had the exemption not applied.

4.9 Effect of Non-Payment and Remedies.

4.9.1 Late Fees and Interest. Any assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board. 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.

4.9.2 Legal Remedies. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Lot in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Lot, and to convey or otherwise deal with such Lot. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code §§ 57-8a-302 and -303, as the same may be amended. To this end, the Declarant (and each Owner by acceptance of a deed to a Lot) hereby conveys and warrants pursuant to Utah Code §§ 57-1-20 and 57-8a-302 to Paxton R. Guymon, a licensed Utah attorney, as trustee, with power of sale, each Lot and all Improvements to each Lot for the purpose of securing payment of assessments under the terms of this Declaration. The Association shall have the right to substitute said trustee and appoint a successor trustee as provided by statute. The lien of the Association shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded prior to the recordation of this Declaration, a First Mortgage on a Lot, and assessments, liens, and charges in favor of the State of Utah or a political subdivision thereof imposed for taxes or other governmental assessments or charges past due and unpaid. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner appointed to

collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

ARTICLE 5

COMMON AREAS

5.1 **Identification.** The Project shall have Common Areas consisting of portions of the Project intended for the common use of the Owners, including areas designated as Common Areas on the Plat Map. During the Period of Declarant's Control, Declarant may, in Declarant's discretion, alter or amend the scope and extent Common Areas. The Declarant during the Period of Declarant's Control and the Association thereafter may install additional amenities on Common Areas which are deemed appropriate or beneficial to the Project.

5.2 **Use and Enjoyment.** Except as provided herein, each Owner shall have a non-exclusive right to use and enjoy the Common Areas. The right of use and enjoyment shall include an access easement to and over all Common Areas.

5.2.1 The right to use and enjoy the Common Areas shall be appurtenant to such Owner's ownership of a Lot within the Project and shall immediately transfer upon any conveyance of the Lot.

5.3 **Ownership and Dedication.** The Common Areas shall be owned by the Association and Declarant hereby dedicates the Common Areas to the Association.

5.4 **Rules to be Adopted by the Board.** Notwithstanding the foregoing, the Rules and Regulations adopted by the Board may include reasonable restrictions on the time, manner, and character of use of the Common Areas by the Owners, their guests, or invitees, including the limitations on total number of persons permitted to use the Common Areas at any given time. The Board may enforce the Rules and Regulations as provided in Section 2.5 of this Declaration.

5.5 **Maintenance.** The Association, directly or through the Manager or other designated agents, shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace and maintain the Common Areas. The Association shall maintain all landscaping of the Common Areas. The Association shall pay all utility charges attributable to the Common Areas. No Owner, directly or indirectly, shall make any alterations to any Common Areas without prior written consent of the Board.

5.6 **No Obstruction.** No person shall obstruct or permanently occupy any portion of a Common Area without prior written permission of the Board.

5.7 Limitations on Use. In addition to restrictions set forth in the Rules and Regulations, an Owner's right to use and enjoy the Common Areas may be temporarily or permanently restricted in the following circumstances consistent with, and to the extent allowed by, the Act:

5.7.1 Any period during which the Assessments imposed against such Owner's Lot remain unpaid.

5.7.2 Any period during which such Owner, such Owner's Lot, or any Improvement upon such Owner's Lot is or remains in a state of non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations adopted by the Board, including, without limitation, the failure to maintain an Owner's Residence as provided in Article 7. Notwithstanding the foregoing, each Owner shall have fifteen (15) days after receiving written notice of such non-compliance to remedy the same, and shall have the opportunity for a hearing before the Board, before any restriction shall be imposed under this Section 5.7.2.

ARTICLE 6

USE LIMITATIONS AND RESTRICTIONS

6.1 Residential Use and Occupancy. Each Lot, and all Improvements thereon, shall be used only for non-commercial, residential purposes. No Lot shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Lot, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance. The primary Improvement on each Lot shall be a Residence. Any other Improvements on the Lot shall be consistent with and shall not detract from the residential nature of the Project. Subject to the Declarant exemption, below, there shall be no temporary or prefabricated structures, mobile homes, trailer houses, or other non-permanent structures allowed in the Project

6.2 Fencing. The ACC may establish Design Guidelines, pursuant to Section 8.1.2, which govern the color, character, materials, design, size, and scope of permissible fencing.

6.3 No Further Subdivision. Except as may be allowed in writing by the Declarant, no Lot or Common Area shall be further subdivided or separated into smaller parcels. No conveyance of less than all of any Lot shall be permitted.

6.4 Prompt Repair. Each Residence and other Improvement on an Owner's Lot shall be kept in good repair. As applicable, the Owner or Association shall promptly repair damage to any Residence or Improvement on such Owner's Lot.

6.5 Nuisances and Offensive, Unsightly, and Unsafe Conditions. No Owner shall permit any noxious, offensive, unsightly, or unsafe activity, object, animal, or condition to exist on such Owner's Lot. Without limiting the generality of the foregoing, no unreasonable noise or disturbance shall be permitted on any Lot. Trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, behind approved fencing or otherwise enclosed or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except within an enclosed structure or when appropriately screened from view. No Owner shall dispose, or permit to be disposed, any oil, gas, toxic or hazardous material, or other unsafe substance within the Project. The Board may adopt reasonable Rules and Regulations to further clarify the responsibilities of Owners under this Section.

6.6 Ingress and Egress. Each Owner shall have a right of ingress to and egress from such Owner's Lot, with such right of ingress and egress being perpetual and appurtenant to ownership of the Lot.

6.7 Encroachment. Subject to Section 9.2.1 of this Declaration, no Improvement on any Lot shall encroach on an adjoining Lot or Common Area and any such encroaching Improvements must immediately be removed at the expense of the Owner of the Lot from which the Improvement encroaches. If, however, encroachment occurs due to natural settling or shifting or for other reasons beyond the control of the Owner, the Owner shall be deemed to have an easement for the maintenance of such encroaching Improvement which shall exist, and shall run with the land, for so long as the encroaching Improvement exists.

6.8 View Impairment. Declarant makes no representation or guarantee that the view from, across, or over any Owner's Lot will remain the same as when purchased by such Owner. Construction of Residences or other Improvements within the Project may affect such Owner's view. In addition, landscaping and trees may also impact an Owner's view and the Declarant and Association will have no obligation to prune or trim any landscaping or trees except as may be set forth in any applicable City ordinances.

6.9 Leasing. Notwithstanding anything to the contrary in this Declaration, any restriction, resolution, rule or regulation affecting the leasing of Residences shall require an amendment to this Declaration and shall comply with the requirements of Utah Code Ann. § 57-8a-209, as the same may be amended. Notwithstanding the foregoing, no such amendment shall

be permitted without the express written consent of Declarant, so long as Declarant owns any portion of the Property.

ARTICLE 7

MAINTENANCE

7.1 Maintenance of Residences by Owner. The Owner of each Residence shall maintain such Owner's Lot, and all permitted Improvements thereon including the Residence, in good repair and in a clean and tidy manner, and in accordance with all the Covenants, the Design Guidelines, and the Rules and Regulations and in a manner that does not detract from the overall appearance of the Project. Such maintenance will be performed at the Owner's expense without any setoff right. The Board may adopt reasonable Rules and Regulations governing the appearance and use of driveways, decks, patios, and balconies within the Project. Without limiting the generality of the foregoing, each Owner of a Residence has the following obligations: such Owner shall be responsible to maintain the roof, foundation, beams, exterior surfaces and siding, rain gutters and downspouts, doors, windows, driveways, concrete, patios, balconies, garage doors, and other exterior components of the Residence. Each Owner shall also be responsible for the maintenance of the interior of each Residence and to keep the same in good repair. Each Owner shall be responsible to protect the side yard swales from disturbance, relocation, and/or removal in accordance with the Plat Map. The ACC or the Board may establish, by Design Guidelines or Rules and Regulations, applicable landscaping guidelines which Owners must follow. Each Owner of a Residence shall be responsible for the maintenance, repair, and replacement of all utility lines serving such Owner's Residence, provided that no Owner shall do any work or perform any act that will, or may, impair the ability of any utility lines or fixtures to serve other Residences within the Project.

7.2 Common Areas. The Association shall maintain the Common Areas within the Project. The Association shall keep Common Areas and other areas for which it is responsible clean, appropriately landscaped, functional, attractive, and generally in good condition and repair consistent with any applicable requirements of the City. In accordance with the Plat Map, all hillside drains and cut-off swales will be private and will be owned and maintained by the Association. The Detention Area, the Open Space Parcels, and/or any other Common Areas shall be maintained by the Association. In the event that maintenance or repair to Common Areas is caused by the willful or negligent acts of any Owner or group of Owners, or by their guests or invitees, the cost of such maintenance may be assessed solely to the responsible Owner or Owners as a special assessment.

7.3 Roads and Streets. Roads and streets within the Project may be dedicated to the City for public use and will be maintained by the City, as designated on the Plat Map.

7.4 Utilities. The Owner of each Lot shall pay for all utility services provided to such Lot, except utility services which are not separately billed or metered. Any such common utilities shall be paid by the Association and an appropriate share shall be charged to each Lot as part of the annual assessment.

7.5 Remedies for an Owner's Failure to Maintain. The Association shall have the right to enforce the maintenance obligations set forth in this Article 7. Among other available remedies, the Association shall have the right to enter each Owner's Lot and perform maintenance otherwise required to be performed by an Owner and to recover the cost of such maintenance from such Owner as a special assessment against such Owner and such Owner's Lot if the Board determines that such Owner is unwilling or unable to timely perform such maintenance. Except in the case of an emergency, the Association may not exercise this remedy unless: (a) the Owner has been given written notice of the need to perform such maintenance and fifteen (15) days have elapsed since such notice was given without the required maintenance being performed by such Owner, and (b) the Owner is given the opportunity for a hearing before the Board.

ARTICLE 8

ARCHITECTURAL CONTROL

8.1 Residential Structures. The primary Improvement on each Lot shall be a Residence. Any other Improvement on the Lot shall be consistent with and shall not detract from the residential nature of the Project. Subject to the Declarant Exemption (defined below), there shall be no temporary or prefabricated structures, mobile homes, trailer houses, or other non-permanent structures allowed in the Project.

8.2 Construction. Unless otherwise permitted by the Board, any builder must use its best efforts to complete the Residence within twelve (12) months from the commencement of construction. This includes all exterior painting and finish work and the installation of all required landscaping. During the construction of any Improvement, the affected Lot must be kept reasonably clean and tidy and all construction debris must be controlled and regularly removed. All construction activities must comply with the Covenants set forth in this Declaration, the terms of the Bylaws; and the Rules and Regulations promulgated by the Board and all local zoning ordinances, building codes, and other applicable laws.

8.3 Specific Single-Family Design Standards. In addition to design and maintenance criteria promulgated by the ACC, the provisions of this Section shall apply to any Residence constructed within the Project.

8.3.1 Exterior materials shall include brick, stucco, stone, or other

decorative masonry products (including fiber-cement siding if approved by the City's planning commission). A minimum of forty percent (40%) of the front exterior and any side or rear viewable from the street shall be brick or stone. Vinyl and wood siding are not permitted. However, shake shingles may be permitted as an accent material, subject to the ACC's approval. All sides of Residences shall receive equal design consideration, particularly where they may be readily viewed by pedestrians and motorists, or from adjacent properties.

8.3.2 Building colors and materials for the Project shall be in conformance with the City planning commission's approvals of the subdivision.

8.3.3 All Residences shall include a three (3) car garage with the minimum dimensions of 22 feet by 22 feet or as may be approved by the ACC. Additionally, the driveway of each Residence shall accommodate parking for at least two (2) passenger vehicles.

8.3.4 Residences shall have the minimum square footage of 1800 sq.ft and shall have a minimum roof pitch of five to twelve (5:12).

8.3.5 The elevations of Residences within the Project shall vary so that the same elevation is not built across the street or within three (3) lots on the same side of the street.

8.3.6 Residences within the Project shall meet the setbacks as established by the City code and as indicated on the recorded Plat for this subdivision.

8.3.7 The foregoing restrictions may be waived, altered, or adjusted by the ACC on a case-by-case basis, in the judgment of the ACC, if such variations or adjustments meet City building standards or are approved by the City's planning commission.

8.4 Architectural Control Committee.

8.4.1 There shall be an Architectural Control Committee ("ACC") of the Association. During the Period of Declarant's Control, Declarant shall be entitled to select the members of the ACC, which shall number no less than three (3) members. During the Period of Declarant's Control, members of the ACC do not need to be Owners. After the Period of Declarant's Control, the Board shall select not less than three (3) Owners to be the members of the ACC. The Board may, from time to time, remove or replace members of the ACC. Until the ACC is appointed, the Board shall

perform all functions and. exercise all rights of the ACC set forth herein.

8.4.2 The ACC shall promulgate design and maintenance criteria for the Residences and all other Improvements permitted within the Project. The design and maintenance criteria may vary for each phase of the Project. The design and maintenance criteria shall be consistent with the building, land use, and other ordinances and regulations promulgated by the City. The ACC may regulate the placement of signs, banners and similar displays within the Project. The ACC shall make such design and maintenance criteria available to all Owners or prospective Owners and, if possible, shall publish the design and maintenance criteria in electronic format.

8.4.3 All Residences, fences, and other Improvements must be constructed and maintained in accordance with the ACC's design and maintenance criteria. Prior to construction, alteration, modification, or replacement of any Improvements within the Project, an Owner shall submit plans for the same to the ACC. The ACC shall evaluate all such plans for compliance with the ACC's design and maintenance criteria.

8.4.4 The ACC may establish a schedule of reasonable fees for review of plans for any proposed Improvements and may collect such fees before any obligation to review plans under this Article 8. The ACC may employ architects, engineers, and other professionals to review plans submitted by an Owner. The Owner shall pay all expenses reasonably associated with the ACC's review of the plans. The review fee shall be \$450 for the initial review and \$175 for any subsequent re-review of the same plan if necessary.

8.4.5 The ACC shall approve or deny such plans in writing within thirty (30) business days following receipt of the same. Failure to approve or deny such plans within the time period provided shall constitute an approval.

8.4.6 The ACC shall have the right, but not the duty, to enforce compliance with the design criteria, including by means of fines levied by the Association or by legal action, in which case the ACC shall be entitled to recover the costs of enforcement, including reasonable attorney fees.

8.5 Declarant Exemption. Nothing in this Article 8 shall prohibit or restrict the ability of the Declarant to use any Lots owned by Declarant, and the Common Areas during the Period of Declarant's Control, for any purposes consistent with or intended to facilitate the improvement and sale of Lots owned by Declarant. Declarant may maintain and operate temporary structures for construction, sales, or business purposes. Declarant shall not be bound by the ACC's design and maintenance criteria and reserves the right to alter or modify

the plans for any Improvement on any Lot at any time Declarant owns such Lot. Declarant shall not be bound by the time limitation for construction activities set forth in this Declaration. Declarant's sales and marketing activities are exempt from the ACC's design and maintenance criteria. Any Commercial Builder will be subject to the ACC's design and maintenance criteria and the other provisions of this Article 8.

ARTICLE 9

EASEMENTS

9.1 **Easements Shown on Plat Map.** The Property and Lots are subject to the easements, rights of way, encroachments, and other encumbrances as shown on the Plat Map. Within such easements, no Improvement of any type shall be placed or permitted to remain which may damage or interfere with the intended purpose of such easement.

9.2 **Easements Reserved.** In addition to easements shown on the Plat Map or otherwise provided for in this Declaration, the following easements are reserved for the benefit of the Owners and the Association:

9.2.1 **Easement for Encroachment.** If, because of an error in original construction, an error on the Plat Map, natural settling or shifting of the earth, or good faith mistakes during repair or reconstruction, any part of the Common Areas encroaches on an adjoining Lot, an easement for the encroachment and for maintenance of the Common Areas shall exist in favor of the Declarant during the Period of Declarant's Control and the Association thereafter.

9.2.2 **Public Dedication.** The Declarant reserves, for itself and its successors and assigns, the right to dedicate all roads, streets, alleys, open space, rights of way or easements shown on the Plat Map to public use. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as shown on the Plat Map.

9.2.3 **Current Utility Easements.** The Association and public utility or public service providers shall have an easement for the installation, maintenance, and repair of such utilities and services as shown on the Plat Map. Except for equipment or improvements for which the public utility or public service provider is responsible, each Owner shall maintain the portion of such Owner's Lot burdened by a utility easement.

9.2.4 **Future Utility Easements.** Declarant reserves, for itself and its successors and assigns, an easement, and the right to grant easements to any person, individual,

corporate body, or municipality, across, over, under, upon, and through any Lot, Common Area, road, street, open space, or other portion of the Project, for the installation, construction, maintenance, reconstruction and repair of public, quasi-public, or private utilities and related facilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, pipelines, laterals, underground or above-ground lines and cables, transmission facilities, meters and other facilities and appurtenances necessary or useful for the provision of water, storm sewer, sanitary sewer, gas, electricity, telephone, cable television, internet and data and other public, quasi-public or private services or utilities deemed by Declarant necessary or advisable to provide any service to the Project or any Lot, Common Area, or other portion thereof.

9.2.5 Grading and Drainage. Declarant reserves, for itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Residence built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope. In addition, if Declarant establishes a drainage system within the Project, each Owner must maintain such drainage system and not do anything to modify or interfere with the same.

9.2.6 Right of Entry onto Lots. The Declarant during the Period of Declarant's Control and the Association thereafter shall have the right, through authorized agents, to enter onto any Lot after reasonable notice to the Owner thereof for the purpose of performing maintenance or determining whether the Lot, or any Improvements thereon, complies with this Declaration, the Bylaws, and the Rules and Regulations. Except in the event of an emergency, entry made pursuant to this Section shall be during normal business hours, at a time convenient for the Owner, after reasonable notice.

9.2.7 Right of Entry onto Common Areas. Declarant during the Period of Declarant's Control and the Association thereafter shall have the right, through authorized agents, to enter upon the Common Areas for maintenance, repair, replacement, and such other purposes as Declarant deems necessary, including the right to make openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and the right to make such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

9.3 Easement for Entry Monuments. Declarant reserves the right to place, at Declarant's discretion and at any time during the Period of Declarant's Control, one or more entry monuments on one or more Lots within the Project, provided that any such monuments shall not unreasonably interfere with the residential use of such Lot. If the Declarant elects to install one or

more entry monument, the Association shall thereafter have an easement on the affected Lot or Lots for the purpose of maintenance of such monument and such maintenance shall be a Common Expense.

ARTICLE 10

DECLARANT RIGHTS AND CONTROL

10.1 Declarant's Administrative Control. During the Period of Declarant's Control, neither the Board nor the Association shall take any action without Declarant's prior written approval.

10.2 Construction Activities. So long as Declarant owns at least one (1) Lot within the Project, Declarant shall have the right to conduct construction activities on or related to such Lot and shall not be bound by any limitations related to construction activities set forth in this Declaration. During the Period of Declarant's Control, Declarant shall have a non-exclusive easement and right-of-way in, through, under, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services and other services or facilities to the Project. Notwithstanding any other provision of this Declaration to the contrary, Declarant, in its absolute discretion, shall have the right to construct and install any and all Improvements within the Project which Declarant desires, so long as they comply with the applicable ordinances of the City, but this provision shall not be construed to impose any obligations on Declarant to construct any such Improvements.

10.3 Sales Activities. Notwithstanding any other provision of this Declaration, so long as Declarant owns at least one (1) Lot within the Project, Declarant shall have the right to conduct reasonable sales activities including, but not limited to maintaining one or more sales office or model home on Lots owned by the Declarant and using the same for business purposes and maintaining a reasonable number of "for sale" signs or other similar marketing materials in the Project, including Common Areas.

10.4 Declarant's Rights Assignable. Declarant may assign the rights of Declarant set forth under this Declaration, or those rights in any way relating to the Property, to a purchaser or successor in interest. Upon assignment, such assignee shall be deemed the Declarant for all purposes under this Declaration.

ARTICLE 11

INSURANCE

11.1 Insurance Held by Owner. Each Owner shall obtain and maintain insurance covering the personal contents of the Residence or other Improvements on such Owner's Lot. Each

Owner shall also maintain a policy of homeowner's insurance on the Residence on such Owner's Lot, protecting such Residence against casualty and loss, in an amount not less than one hundred percent (100%) of the current replacement value of such Residence.

11.2 Insurance Held by Association. The Association shall obtain and maintain all insurance policies required by Part 4 of the Act consistent with the terms and conditions of the Act. The coverage amounts, limits, terms, and conditions of the Association's policies shall be comparable to similarly situated homeowners associations in the Wasatch Front area. All premiums for insurance policies held by the Association shall be funded by Assessments. Without limiting the foregoing, the Association shall obtain and maintain:

11.2.1 Property and liability insurance for all Common Areas.

11.2.2 Fidelity insurance (e.g., directors' and officers' coverage).

11.2.3 Such other insurance policies for casualty or liability as the Board deems necessary or desirable.

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

ARTICLE 12

DURATION AND AMENDMENT

12.1 Duration. This Declaration shall be effective, and the Covenants set forth herein shall encumber the Property, from the date the Declaration is recorded in the County Recorder's Office and, as amended from time to time, this Declaration shall continue in full force and effect against the Property and the Covenants shall run with the land in perpetuity, for as long as the law allows unless amended or terminated as provided herein.

12.2 Amendment. During the Period of Declarant's Control, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. The foregoing sentence does not preclude other amendments proposed by Members of the Association, provide that any such amendment proposed during the Period of Declarant's Control must be approved by sixty-seven percent (67%) of the Members of the Association and must also be approved by the Declarant in writing before it can be effective. After the Period of Declarant's Control, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the Members of the Association and such amendment must contain a statement from the Board

certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the County Recorder's Office.

12.3 Termination. An agreement to terminate this Declaration and the Covenants set forth herein, shall require same approval required for an amendment as set forth in Section 12.2 of this Declaration. In addition, after the Period of Declarant's Control any agreement to terminate must be approved, or deemed approved, by at least sixty-seven percent (67%) of the Eligible Mortgagees as provided in Section 14.3 of this Declaration.

ARTICLE 13

MANDATORY DISPUTE RESOLUTION REQUIREMENTS

13.1 Statement of Intent. Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Areas are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Article 13. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Areas AS IS, with no warranties of any kind except as maybe provided in writing or as otherwise required as a matter of law. Unless otherwise provided in writing (and then only except to the extent of such writing), the Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

13.2 Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner, group of Owners, or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project,

which arise from or are in any way related to the design, use, construction, or maintenance of any Residence or other Improvement on a Lot, the Common Areas, or any other Improvement on, or component of, the Project (each, a “**Dispute**”), shall be submitted to final and binding arbitration in lieu of litigation. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Each Owner recognizes that this Section 13.2 amounts to a **WAIVER OF THE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY DISPUTES** and, by taking title to a Lot, knowingly agrees to that waiver. Notwithstanding the foregoing, arbitration proceedings shall not be commenced unless all of the Pre-Arbitration Requirements set forth in Section 13.3 have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

13.2.1 Any allegation that a condition in any of the Residences on the Lots, the Common Areas, or other Improvements in the Project is or involves a construction defect;

13.2.2 Any disagreement as to whether an alleged construction defect has been corrected;

13.2.3 Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

13.2.4 Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

13.2.5 Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

13.2.6 Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

13.2.7 Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

13.2.8 Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

13.2.9 Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

13.2.10 Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

13.2.11 Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

13.2.12 Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

13.2.13 Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Lots, Common Areas, off-site improvements, the formation, operation, governance, and/or management of the Association, or other claims regarding the Project.

13.3 Pre-Arbitration Requirements.

13.3.1 Generally. An Owner or the Association may only pursue a claim against the Declarant in arbitration after **ALL** of the following efforts of dispute resolution have been completed: (a) the claimant (e.g. the affected Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the applicable builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; and (b) if the Dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

13.3.2 Notice of Claim. For purposes of this Article 13, "Notice of Claim" shall mean and include **ALL** of the following information: (a) an explanation of the nature of the claim, (b) a specific breakdown and calculation of any alleged damages, (c) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (d) photographs of any alleged defective condition, if applicable, (e) samples of any alleged defective conditions or materials, if reasonably available, (f) an explanation of the efforts taken to avoid, mitigate, or minimize

the claim or any alleged damages arising therefrom, and (g) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

13.4 Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described “Pre-Arbitration Requirements,” then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the Panel of Construction Arbitrators appointed by the American Arbitration Association (“AAA”). The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the AAA. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

13.5 Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator **SHALL NOT** award attorney fees, expert witness fees, or arbitration costs, to the prevailing party.

13.6 No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Article 13. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the pre-arbitration requirements set forth above.

13.7 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners,

and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, 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 or builder, 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, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation

13.8 Enforcement of Covenants. Notwithstanding the foregoing, any legal action taken by Declarant to enforce the Covenants shall be subject to the terms of Section 2.5 of this Declaration, not this Article 13.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Damage or Destruction.

14.1.1 Attorney in Fact. Each Owner irrevocably appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for the purpose of dealing with the Project in the event of damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association, except as otherwise provided in this Declaration.

14.1.2 Definition of Repair and Reconstruction. Repair and reconstruction of the Improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Lot and the Common Areas having substantially the same vertical and horizontal boundaries as before.

14.1.3 Procedure. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows. The Association shall give timely

written notice to any First Mortgagee on a Lot or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Lot subject to the Mortgage held by such First Mortgagee. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed. In no event shall an Owner of a Lot or any other party have priority over the First Mortgagee on such Lot with respect to the distribution to such Lot of any insurance proceeds.

14.1.4 Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein.

14.1.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association, and any amounts received from assessments made shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

14.2 Condemnation.

14.2.1 In General. If at any time, or from time to time, all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Section shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Lot or portion thereof, or the Common Areas or any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

14.2.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board, on behalf of the Association as herein provided.

14.2.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Lots immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

14.2.4 Partial Taking. In the event that less than the entire Project is taken by power of eminent domain, the following shall occur:

14.2.4.1 Allocation of Condemnation Award. As soon as practicable, the Board shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amount and pay the same to the Owners as follows: (a) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken); (b) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Lots that have not been taken; (c) The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner of such Lot; (d) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances; (e) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; (f) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and (g) No provision of this Section, or any other provision of this Declaration, the Association's Articles of Incorporation or the Bylaws shall entitle the Owner of a Lot, or other party, to priority over any First Mortgagee of such Lot with respect to the distribution to such Lot of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceedings.

14.2.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows: (a) If any partial taking results in the taking of an entire Lot, then the Owner thereof shall cease to be a Member of the Association and all voting rights shall terminate; (b) If any partial taking results in the taking of a portion of a Lot, the voting rights appertaining to such Lot shall continue; (c) If any partial taking results in the taking of a portion of a Lot and if there is a determination made by the Board, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Lot, then all voting rights shall terminate and the remaining portion of such Lot shall thenceforth be part of the Common Areas; (d) The Board, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section (including a possible reallocation of voting rights); provided, however, that if any such determination shall have been or such action is taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

14.2.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Section 14.1 of this Declaration for cases of Damage or Destruction, as applicable.

14.3 Mortgagee Provisions.

14.3.1 Owner's Right to Separate Mortgages. Each Owner shall have the right to separately mortgage or otherwise encumber such Owner's Lot. No mortgage by any Owner shall encumber any other Owner's Lot or any portion thereof.

14.3.2 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage (any one of which is an "**Eligible Mortgagee**"), which written request shall identify the name and mailing address of such First Mortgagee, insurer, or governmental guarantor and the Lot number or physical address of the Residence, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of: (a) Any condemnation, loss or any casualty loss which affects a material portion of the Project, or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor; (b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Lot is subject to a First Mortgage held, insured or guaranteed

by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.3.2 or elsewhere herein.

14.3.3 Matters Requiring Mortgagee Approval. After the Period of Declarant's Control, and except as otherwise provided in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Lots in the Association, and Eligible Mortgagees holding First Mortgages on Lots having at least fifty-one percent (51%) of the votes of the Lots subject to First Mortgages held by Eligible Mortgagees shall be required to: (a) Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs; (b) Add or amend any material provision of the Declaration, Articles of Incorporation, Bylaws or Plat Map, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only): the conversion of Lots into Common Areas or vice versa, a material change to hazard or fidelity insurance requirements, the imposition of any restrictions on Owner's right to sell or transfer his Lot, the establishment of self-management by the Association if professional management had been required previously by the Declaration or by an Eligible Mortgagee, or a change to or deletion of any provision that expressly benefits Mortgagees, insurers, or guarantors.

14.3.4 Response. Any Eligible Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within sixty (60) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

14.3.5 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Lots in the Project. Generally, these documents shall be available during normal business hours. The Association shall make any audited financial statement which the Association obtains available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request, and at such requestor's expense.

14.3.6 Subordination of Lien. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title, shall be collected or enforced by the Association from or against a First Mortgagee or the Lot affected or previously affected by the First Mortgage concerned.

14.3.7 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in this Declaration lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

14.3.8 Priority. No provision of this Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Areas.

14.4 Notices. The Association shall keep a list of contact information for Owners of all Lots within the Project and all Eligible Mortgagees. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner or Eligible Mortgagee 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 Rules and Regulations, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

14.5 Interpretation. The captions and section headings set forth in this Declaration are for convenience and the meaning of the provisions set forth in the sections hereof shall be governed by the body of the text. The use of any plural shall, where the context requires, include the singular thereof, and vice-versa.

14.6 Governing Law. This Declaration shall be governed by, and interpreted in accordance with, the laws of the State of Utah.


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

14.8 Waiver. The failure by the Declarant, the Association, or any Owner to enforce any term or provision of this Declaration shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

[Signature Page Follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration on this 28 day of October, 2019

DECLARANT
CASTLEWOOD- INDIAN SUMMER,
LLC., a Utah limited liability company

By: 
Name: Jeffrey Duke
Title: Manager

STATE OF UTAH)

ss.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 28 day of October, 2019 by Jeffrey Duke as the Manager of Castlewood- Indian Summer, LLC.




Notary Public

EXHIBIT A

(Property Description and Parcel Numbers)

BOUNDARY DESCRIPTION

A portion of the NW1/4 of Section 35, Township 3 South, Range 4 East, Salt Lake Base & Meridian, located in Midway, Utah, more particularly described as follows:

Beginning at a point on a Boundary Line Agreement recorded in Deed Book 958 Page 636 of the Official Records of Wasatch County located S89°44'37"W along the Section line 467.23 feet and South 2,048.72 feet from the North ¼ Corner of Section 35, T3S, R4E, S.L.B.& M.; thence South along said Agreement line 69.00 feet; thence S4°19'42"W 120.43 feet; thence S89°59'46"E 134.21 feet; thence S0°00'54"W 121.84 feet; thence S0°01'08"W 87.00 feet; thence West 197.01 feet; thence S0°17'40"W 216.73 feet to a point on a Boundary Line Agreement recorded in Deed Book 958 Page 627 of the Official Records of Wasatch County; thence West along said Agreement line 815.55 feet to the southerly terminus of a Boundary Line Agreement recorded in Deed Book 958 Page 629 of the Official Records of Wasatch County; thence N0°13'21"E along said Agreement line and extension thereof 610.30 feet; thence N89°45'09"E 512.00 feet to the westerly terminus of a Boundary Line Agreement recorded in Deed Book 958 Page 636 of the Official Records of Wasatch County; thence N89°40'11"E along said Agreement line 374.25 feet to the point of beginning.

Contains: 12.70+/- acres

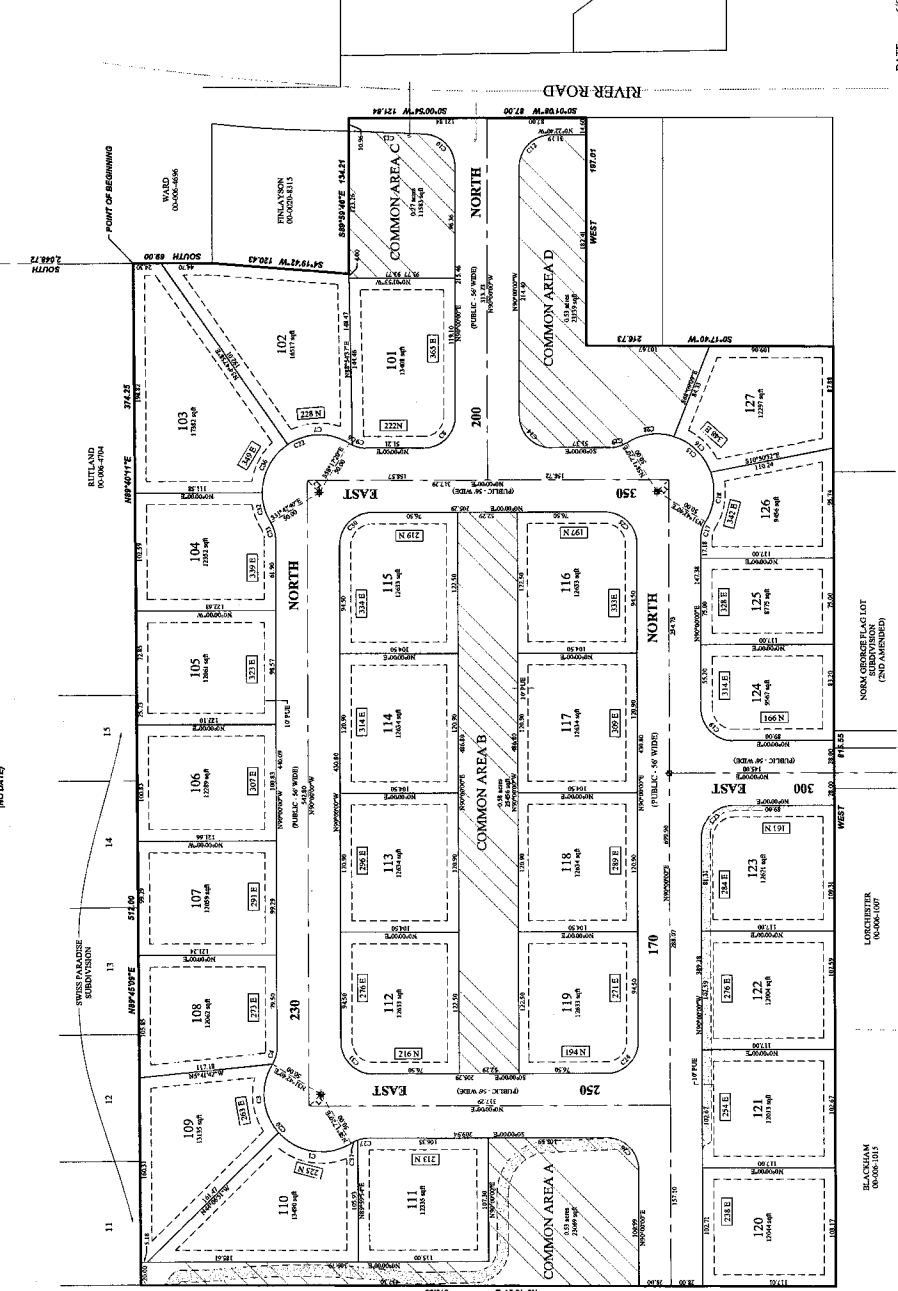
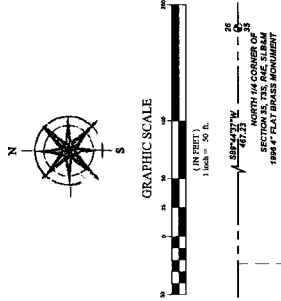
EXHIBIT B

(Plat Map)

INDIAN SUMMER SUBDIVISION

A PORTION OF THE NW 1/4 OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAUL LAKE BASE & MERIDIAN, LOCATED IN MIDWAY, UTAH

LEGEND: PUBLIC TRAIL (shaded), COMMON AREA (dotted), STREET MONUMENT TO BE SET



PLANNING DEPARTMENT: APPROVED THIS ... DAY OF ... A.D. ... WASATCH COUNTY SURVEYOR
PLANNING COMMISSION: APPROVED THIS ... DAY OF ... A.D. ... MIDWAY CITY ENGINEER
MIDWAY CITY APPROVAL: APPROVED THIS ... DAY OF ... A.D. ... MIDWAY CITY MAYOR

SUBDIVISION CONTINGENT SURVEYORS CONTRACT: I, SPENCER W. LEBLANC, COUNTY CLERK, DO HEREBY CERTIFY THAT THE SUBDIVISION PLAT IS IN ACCORDANCE WITH THE ...

BOUNDARY DESCRIPTION: A portion of the NW 1/4 of Section 34, Township 3 South, Range 4 East, Salt Lake Base & Meridian, located in Midway, Utah, more particularly described as follows:

OWNER'S DEDICATION: NOWBY ALL BY THESE PRESENT PARTIES, THE UNDERSIGNED OWNERS OF THE DESCRIBED TRACT OF LAND ABOVE, HAVING CAUSED THE SAME TO BE SURVEYED INTO LOTS, COMMON AREA AND STREETS TO HEREINAFTER BE KNOWN AS INDIAN SUMMER SUBDIVISION

LIMITED LIABILITY ACKNOWLEDGMENT: STATE OF UTAH, COUNTY OF ... NOTARILY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, IN AND FOR THE COUNTY OF ...

INDIAN SUMMER SUBDIVISION: MIDWAY IRRIGATION, MIDWAY SANITATION DISTRICT, MIDWAY SAMUEL DISTRICT

FOCUS ENGINEERING AND SURVEYING, LLC 2 WEST CENTER STREET, MIDVALE, UTAH 84047 PH: (801) 555-6675

EXHIBIT C

(Association Bylaws)

WHEN RECORDED, MAIL TO:

Castlewood- Indian Summer, LLC
c/o Jeffrey A. Duke
6900 South 900 East, Suite 130
Salt Lake City, Utah 84047

**BYLAWS
OF
INDIAN SUMMER HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION. The name of the corporation is Indian Summer Homeowners Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at 6900 South 900 East, Suite 130, Salt Lake City, Utah 84047 (or at such other location as the Board may designate), but meetings of Owners and Board Members may be held at such places within the State of Utah as may be designated by the Board.

ARTICLE II
DEFINITIONS

Section 1. "Act" shall mean and refer to the Community Association Act, Utah Code Ann. 57-8a-101, *et seq.*

Section 2. "Association" shall mean and refer to Indian Summer Homeowners Association, Inc., and its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors, with all powers as stated in the Declaration, the Articles of Incorporation of the Association, and these Bylaws.

Section 4. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Easements and Restrictions of Indian Summer Homeowners Association, Inc., filed of record in the Wasatch County Recorder's Office in the State of Utah on _____, as Entry No. _____, as the Declaration may be amended in accordance with its terms and provisions. These Bylaws shall be recorded against the same property encumbered by the Declaration.

Section 5. "Directors" shall mean and refer to those individuals who are members of the Board. The singular Director shall refer to the singular of the Directors.

Section 6. All other capitalized terms used herein shall have the same meaning as stated in the Declaration.

ARTICLE III
MEMBERSHIP IN ASSOCIATION; MEETING OF OWNERS; VOTING

Section 1. Membership in Association. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Each Owner of a Lot shall be a Member of the Association and each Owner is allotted one (1) vote per Lot owned. Membership shall be held jointly by all Owners of a Lot. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

Notwithstanding any other provision of this Declaration, during the Period of Declarant's Control all matters for which the Declaration or the Bylaws call for a vote of the Members of the Association may be decided solely by the Declarant with or without a meeting and with or without a vote of the Members. Any matters which are submitted to a vote of the Members during the Period of Declarant's Control will be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all such matters shall be submitted to a vote of the Members of the Association and shall be decided solely by the votes of the Members.

Section 2. Voting. Unless otherwise stated herein, or in the Declaration, all voting shall be by a majority vote of all votes cast. During the Declarant Control Period, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be approved and implemented if and only if the Declarant also approves such matters. Upon the termination of the Declarant Control Period, all matters submitted to a vote of the Association shall be decided solely by the votes of the Members. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded, or, in connection with Owners who are vendees under an installment purchase contract, upon the full execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Association Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular

Lot, the vote for that Lot shall be deemed void and shall not be counted.

Section 3. Annual Meeting. The first annual meeting of the Owners shall be held in June following the date of incorporation of the Association, and each subsequent regular, annual meeting of the Owners shall be held in June of each year thereafter. The Board may change the date of the annual meeting provided it provides reasonable advance notice to all Members.

Section 4. Special Meetings. Special meetings of the Owners may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty percent (30%) of all of the total votes.

Section 5. Notice of Meetings. Written notice of each meeting of the Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least thirty (30) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those Owners present. The President of the Association will give notice of any meetings, and will chair meetings of the Owners.

Section 6. Quorum. The presence at the meeting of Owners entitled to cast, or of proxies entitled to cast, fifty-one percent (51%) of the total votes of the Membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Unless otherwise stated in the Declaration, the Articles of Incorporation, or these Bylaws, a majority of the votes cast at any meeting where a quorum is present shall be the action of the Owners.

Section 7. Proxies. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his or her Lot.

ARTICLE IV BOARD; SELECTION; TERM OF OFFICE

Section 1. Nomination and Tenure. The Declarant shall select the three initial Directors, and the Declarant shall decide who serves on the Board during the time of the Declarant Control Period. Upon the termination of the Declarant Control Period, the Owners at the next annual owners meeting shall elect three Directors. Each of the three elected Directors shall draw lots to divide themselves into terms of one, two and three years. At each successive annual meeting, the Owners shall elect a Director to replace the Director whose term has expired or is then expiring.

Each newly elected Director shall serve for a three year term. So long as a quorum is present, a simple majority of the votes cast shall elect a Director. If a quorum is not present at a meeting, the other Directors shall select a new Director. Nomination for election to the Board shall be made by the Directors. Nominations may also be made from the floor at the annual meeting. If any Director resigns, is removed, dies, or is otherwise unwilling or unable to serve during his or her term, the remaining Directors may appoint another Owner to fill the remainder of such term.

Section 2. Election. Election to the Board shall be by secret written ballot. At such election the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting.

Section 3. Number of Directors. The Board shall consist of not less than three (3) or not more than seven (7) Members. An odd number of Directors shall be required at all times. The initial number of Directors shall be three (3). The number of Directors may be increased or decreased by resolution of the Directors, so long as the number is not less than three (3) or more than seven (7).

ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

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

Section 1. Powers. The Board shall have power to:

A. Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

B. Exercise for the Association all powers, duties and authority vested in or

delegated to this Association and not reserved to the Owners by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

C. Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

D. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, and to carry out through the Manager those of its functions which are properly the subject of delegation.

Section 2. Duties. It shall be the duty of the Board to:

A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Owners who are entitled to vote;

B. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

C. As more fully provided in the Declaration, to:

1. Fix the amount of the Regular Common Assessment against each Lot at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period, and fix the amount of any Special Common Assessments against each Lot;

2. Send written notice of each Regular Common Assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each Special Common Assessment; and

3. Foreclose the lien (at the option of the Board) against any property for which assessments are not paid within ninety (90) days after due date or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same.

D. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

E. Procure and maintain insurance in accordance with the provisions relating to insurance in the Declaration;

F. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

G. Cause the Common Area to be properly maintained.

Section 3. Applicability of the Act. The provisions of the Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

ARTICLE VII
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President, a Vice-President, a Secretary/Treasurer, and such other officers as the Board may from time to time by resolution create. Following the termination of the Declarant Control Period, all officers of the Association must be Owners of Lots in this Project.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Owners.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special officers created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

A. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments of the Association, and shall co-sign all checks and promissory notes.

Vice-President

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

Secretary

C. The Secretary shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

D. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the ownership at its regular annual meeting, and deliver a copy of each to the Owners.

ARTICLE VIII
BOARDS

The Association may appoint Boards or Committees as deemed appropriate in carrying out its purposes.

ARTICLE IX
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X
ASSESSMENTS

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

assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Area or abandonment of his or her Residence.

ARTICLE XI
AMENDMENTS

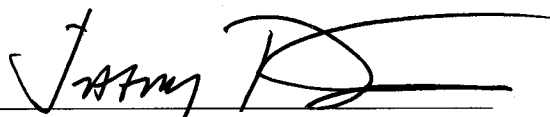
Section 1. These Bylaws may be amended, at a regular or special meeting of the Owners, by a vote of a sixty-seven percent (67%) majority of a quorum of Owners present in person or by proxy; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

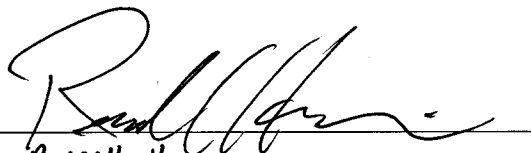
ARTICLE XII
MISCELLANEOUS

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

In witness whereof, we, the undersigned initial three (3) Directors of the Association have hereunto set our hands as of the 28 day of October, 2019.

Signature: 
Jeffrey A. Duke

Signature: 
Darrel Duke

Signature: 
Russell Harris

STATE OF UTAH)
 : ss.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 28 day of October, 2019, by Jeffrey A. Duke, Russell Harris, and Daniel Duke as the Directors of Indian Summer Homeowners Association, Inc.


NOTARY PUBLIC

SEAL:

