

DECLARATION

For



After Recording Return To:

MORRIS SPERRY
7070 South Union Park Center
Suite 220
Midvale, Utah 84047

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

FOR

THE PIER AT STANSBURY
PARK

A PLANNED UNIT DEVELOPMENT

IN

TOOELE COUNTY, UTAH

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS
IN ARTICLE 22 AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE
AND RESOLUTION PROVISIONS AND ARBITRATION REQUIREMENTS, AND
IMPORTANT WARRANTY LIMITATIONS AND DISCLAIMERS IN ARTICLE 23**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE PIER AT STANSBURY PARK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE PIER AT STANSBURY PARK (hereinafter the "Declaration") is adopted by Ironwood Real Estate, LLC, a Utah limited liability company (the "Declarant"), and is effective as of the date it is recorded in the Tooele County Recorder's Office.

RECITALS

- A. By subjecting the Property to this Declaration, it is the desire, intent, and purpose of the Declarant to create a community in which beauty, harmony, and uniformity and uniqueness of appearance will be preserve and enhance the value of Lots and Parcels in the Community.
- B. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
- C. The Declarant hereby adopts this Declaration, which (along with and subject to any future amendments and restatements) shall be the sole Declaration for the Project.
- D. This Declaration affects the real property located in Tooele County, State of Utah, described with particularity on Exhibit A, which exhibit is incorporated herein by reference.
- E. This Declaration is adopted to define the rights of the Association, the Owners, and the Declarant, to provide for a general plan for managing the Project and Property, and in furtherance of the Declarant's efforts to provide a high quality living environment and to enable the Association to protect and enhance the value of the Lots and Parcels now and in the future.
- F. The Declarant hereby desires to establish the Terms and Conditions for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project and/or Property.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants, easements, and equitable servitudes that run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns, and all Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein:



**ARTICLE 1
DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean the Community Association Act codified beginning at Section 57-8a-101, Utah Code Annotated.
- 1.2 “Allocated Interest” shall mean the interest of that Owner in the Common Expense liability, for the purposes of voting in the Association, and for other purposes indicated in this Declaration or the Act.
- 1.3 “Articles” shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 “Assessment” shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.5 “Association” shall refer to The Pier at Stansbury Park HOA, Inc., the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group, regardless of its name.
- 1.6 “Bylaws” shall mean the bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.7 “Committee Member” shall mean a duly-qualified and elected or appointed member of the Management Committee.
- 1.8 “Common Area” shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Project, except Parcels that are not owned by the Association and Lots. Except as otherwise identified on the Plat or provided for in this Declaration, Common Area includes, but is not limited to real property owned or leased by the Association, including any air space or subsurface rights associated with that real property and any fixtures and structures on that real property
- 1.9 “Common Expenses” shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Lots which are maintained by the Association, if any; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) utilities (other than utilities that are separately metered and charged to the Lots), extermination, security, gardening, landscaping, snow removal, and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) any other expenses of the Association arising from the operation of the Association and not otherwise precluded by the Governing Documents or any applicable law.

- 1.10 “Declaration” shall mean this Declaration, including all attached exhibits other than any Bylaws, which are incorporated by reference, and all amendments to this Declaration.
- 1.11 “Electronic Transmission” or “Electronically Transmitted” shall mean a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.12 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.13 “Lender” shall mean a holder of a first mortgage or first deed of trust on a Lot.
- 1.14 “Manager” shall mean any entity or Person engaged by the Management Committee to manage the Project.
- 1.15 “Management Committee” shall mean the entity with primary authority to manage the affairs of the Association.
- 1.16 “Occupant” shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Lot or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Lot against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Lot or of any unauthorized entry and use of the Lot (which shall include the duty to verify the physical condition and occupancy of the Lot, at least monthly, if it is left unoccupied).
- 1.17 “Owner” shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the County Recorder of Tooele County, Utah. Owner shall not include a trustee for a deed of trust.
- 1.18 “Parcel” or “Parcels” shall refer to the parcels of land in the Project that are not Lots.
- 1.19 “Person” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.
- 1.20 “Plat” shall mean the record of a survey map or maps of the Project recorded in the records of the County Recorder of Tooele County, Utah, and all amendments and supplements thereto, including The Pier at Stansbury Park Phase 1 P.U.D. Final Plat recorded with Entry No. 476319 on October 29, 2018.
- 1.21 “Project” shall mean the Property and all structures and improvements thereon including the Lots, the Parcels, and the Common Area.
- 1.22 “Property” shall mean the real property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.23 “Rules” shall mean and refer to the Rules adopted by the Association.

- 1.24 "Terms and Conditions" shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.25 "Lot" shall mean and refer to any one of the individual lots in the Project, and as are or may be designated on the Plat and any amendments thereto, or in the Act as a "Lot." Except where the context specifically requires otherwise, reference to a Lot shall include reference to the Allocated Interest appurtenant to such Lot.

**ARTICLE 2
THE PROJECT**

- 2.1 **Binding Effect of Governing Documents.** The Declarant hereby confirms that the Property is part of the Project and declares and agrees that the Project, and all of the Lots, shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land, and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project is single family home community that contains, or will contain 19 or more single family Lots. The Project includes private roadways, Parcels, Lots, and open space amenities. The Project is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named "The Pier at Stansbury Park" and is located entirely in Stansbury Park, Tooele County, State of Utah. The name commonly used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 **Identification of Lots.** All of the Lots are referenced specifically by number and identified by location on the Plat.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporation and Commercial Code, or any successor division or department of the State of Utah.
- 2.6 **Expansion of Project.** The Project may be expanded or contracted by the Declarant.

**ARTICLE 3
DESCRIPTION OF THE LOTS, COMMON AREA, PLATS,
AND ALLOCATED INTERESTS**

- 3.1 **The Lots.**
 - a. The distinct Lot number that identifies a Lot on the Plat may or may not be consistent with the mailing address of the Lot.



- b. Subject to further specification herein, each Lot consists generally of the real property and all structures, fixtures, lines, pipes, cables, conduits, and other provisions for all utilities on or within the boundary of the Lot.

3.2 Common Area. Unless otherwise provided in this Declaration, the Common Area shall be owned by the Association, which shall include, at a minimum, the Pier Place private road and Parcel A.

3.3 Parcel A.

- a. Parcel A is intended to be an open space recreational area for the use and benefit of Lot Owners. The use of Parcel A by each Lot owner is to be determined by the terms of this Declaration and when consistent with the Declaration, by Rules adopted by the Association. Parcel A may be modified and adapted for different uses over time as the Association Management Committee and Owners may determine consistent with the terms of this Declaration.
- b. To the extent Parcel A is used as a man-made lake, the following provisions shall apply:
1. Any beach, water surface area, or other areas in Parcel A shall be available for the use of all Owners except:
 - i. As assigned for the private use of one or more owners in this Declaration
 - ii. As provided for in Rules of the Association, which may prevent certain uses altogether or limit the time, scope, and manner of any uses.
 2. The owners of Lots 101 through 117 shall have the private exclusive use of any area within Parcel A directly South of their Lots to the edge of the water, wherever that may be at the time, and for twenty-five (25) feet into the water, up to a potential total maximum private use area in Parcel A of 35 feet from the South border of the Lot. These areas shall be maintained in a clean and tidy condition by the owners of the applicable Lot.
 3. The Owner of Lot 118 shall have the private exclusive use of any area within Parcel A directly West of the Lot to the edge of the water, wherever that may be at the time, and for one hundred and twenty-five feet (125) into the water, up to a potential total maximum private use area in Parcel A of 150 feet from the border of the Lot. To the extent that the private use area of Lots 116 and 117 conflict with the private use area of Lot 118, the Owners of the Lots with conflicting private use areas shall both have the right to use the areas in conflict. Lot 118 is a unique and distinct Lot that is not similarly situated to other Lots and therefore the Association may not adopt Rules in any way limiting or regulating the Owner of Lot 118's private exclusive use of Parcel A as provided for in this Section.
 4. No fences shall be allowed on Lots 101 through 117 in the area 25 feet from the South boundary of such lots. In the area from 25 feet to 50 feet

from the South boundary of lots 101 through 117, no fences higher than four feet shall be permitted.

5. The Owners of Lots 101 through 117 shall be required to:
 - i. Preserve, protect, and maintain any sand and other materials on the South border of the Lot such that those materials do not unreasonably wash, slide, or otherwise migrate into the lake.
 - ii. Create and maintain such drainage devices including any necessary sloping of lots and yards as are necessary so that ground water from the areas on the Lots beyond 25 feet from the South border of the lots does not drain into the lake.
6. In lots 101 through 117, no trees, structures, bushes, or other landscaping, other than sand (which shall not be unreasonable piled or increased in depth) shall be allowed in the area of the Lot 25 feet from the South border of the Lot; except that one dock for the boarding, launching, or retrieval of boats and water craft shall be permitted, if allowed in the Association Rules. If allowed, any such dock shall: (1) not extend more than 25 feet from the border of the Lot, (2) shall be floating and shall not be anchored to any underwater surfaces in any way (3) shall not create or cause any debris, discharge, or other pollution in the lake, (4) shall comply with any requirements in the Rules for the size, materials, color, installation, and other aspects of the dock or pier as required in the Rules, which may be more restrictive than the limitations in this Declaration.
7. No motorized boats or watercraft (including but not limited to power boats, wave runners, and jet skis) are permitted in the lake. The Association may adopt Rules related to the use of water toys, non-motorized water craft, sailboats, and other items that may be used in the lake, including restrictions and limitations on the use of such items.

3.4 Allocated Interest of Each Lot in the Association. The Allocated Interest of each Lot shall be equal for all purposes (including assessments and budgeting), except for voting and required owner approvals or consents. For purposes of voting and approval owner or consents only, the allocated interests of each Lot shall be one vote except that Lot 118 shall have twenty votes, such that the total number of allocated interests applicable at any one time and for any voting, consent, or approval issue shall be the number of Lots in addition to 19. Any difference in square footage, location, size, value, or other aspect of any Lot shall not be a reason to alter or change any Allocated Interest. By written notice acknowledged and recorded by the Owner of Lot 118, the Owner of Lot 118 may waive the extra 19 votes provided for in this paragraph. Upon recording of that notice, the Allocated Interest of each Lot for purposes of voting, consents, approvals, and for every other purpose shall be equal

3.5 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, and unless this Declaration expressly states otherwise, the Plat shall

control as to any dimensions except to the extent provided for on the Plat or as otherwise provided by the application of controlling law.

**ARTICLE 4
MAINTENANCE, REMODELING, AND UTILITIES**

4.1 Owner Responsibility for Maintenance of Lots.

- a. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following:
 - 1. All foundations, structures, landscaping, and any other aspects of the Lots.
 - 2. All sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within an Owner's Lot.
 - 3. Any of the following located wherever they might be located (inside or outside of the Lot) that serve an Owner's Lot exclusively, sewer lines, water lines, plumbing, internet and television cables, electrical lines, gas lines, and any other line, pipe, wire, cable, or means of providing similar services.
 - 4. Driveways serving the Lot, sidewalks located on the Lot, and concrete pads within garages on Lots.
 - 5. Fences surrounding or on any Lot. Fences shall be maintained as required by the Association. The Association may establish requirements for any fencing in the Rules, including but not limited to materials requirements or limitations, height requirements or limitations, and color requirements or limitations. Owners shall agree among themselves on the installation and maintenance of any fences on the boundary of two or more Lots. Fences may be constructed in locations permitted by any applicable zoning and lawful requirements and subject to any other restrictions in this Declarations.
 - 6. Any modifications or repairs to the Lot as necessary to mitigate any ground water, radon gas, or other naturally occurring environmental contaminate.
- b. The Owner shall keep the Lot and any structures, fixtures, and landscaping on the Lot in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Management Committee may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed, or placed on the exterior of any structures on any Lot, which may include a prohibition on keeping, leaving, installing, or storing any items or animals in such places.

4.2 Association Responsibility for Maintenance of Lots and Common Areas. The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the following:

- a. All utility lines and plumbing lines to the extent that they serve more than one (1) Lot.



- b. Landscaping, sidewalks, and other structures and fixtures in the Common Area not otherwise assigned to the Owners.
- c. Sidewalks located on Parcels.
- d. Private roadways, private alleys, and parking stalls located within the Project and not otherwise maintained by a municipal entity.

4.3 Modification to Lots and Modification and Construction of Structures on Lots.

- a. The Association may adopt architectural standards for any structures, landscaping, or fixtures on any Lot, which may include: (1) requirements for deposits and reimbursement prior to the start of construction or any modifications for Association expenses related to the enforcement of any standards, (2) requirements for the minimum square footage of any homes or structures, and (3) requirements that certain fixtures or structures be made in a particular manner or that they comply with particular materials or aesthetics requirements or other standards.
- b. No Lot shall be joined with another Lot without a proper amendment to the Declaration and Plat. If any Lots are joined, the Lot shall have the number of allocated interests for voting and assessment purposes as the prior separate Lots.

4.4 Maintenance of and Modifications to Common Area.

- a. Maintenance of Common Area. Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject to the obligation to get approvals for Material Alterations to the Project). The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.
- b. Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
 1. Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Management Committee alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, wakeboard lake, cable system for wakeboarding, or playground equipment. Landscaping alterations, minor adjustments to the layout of parking or sidewalks, and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.

2. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding at least sixty percent (60%) of the Allocated Interests in the Association and must be approved of by the Management Committee. Notwithstanding anything to the contrary herein, no material alteration that changes the size, shape, or location of any Lot shall be permitted without the written consent of the Owners of the Lots to be changed.
 3. Notwithstanding the provisions of Section 4.4(b)(1) and (2), above, the Association may, at any time and in its sole discretion, designate portions of the Common Area as parking areas and make physical alterations as necessary to accommodate parking. Designating portions of the Common Area as parking areas or spaces and the removal of such spaces shall not constitute a material alteration to the nature of the Project.
- c. **Snow Removal.** The Association shall be responsible for removing snow from all Common Area roadways. Owners shall be responsible for removing snow from any driveways and sidewalks on the Owner's Lot and any Common Area sidewalk adjacent to the Owner's Lot. The Association shall remove the snow from any sidewalk areas along roadways, if any, not already assigned to Owners for such snow removal. The Association shall remove snow from roadways in the Project in such a manner and consistent with reasonable standards established by the Management Committee. In the discretion of the Management Committee, the Association may provide more snow removal services for the removal of snow otherwise allocated to the Owners in this Declaration.
 - d. **Standard of Maintenance.** The Management Committee shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area and the portions of the Lots for which the Association has maintenance responsibility, so long as those areas are maintained in the best interests of the Owners.
 - e. **Assessment of Maintenance Expenses to Specific Owners.** Subject to the provisions related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by an Owner or an Occupant, the Association may assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.
- 4.5 **Default in Maintenance.** If an Owner or Occupant fails to: (a) maintain a Lot or Common Area as required in the Governing Documents; or (b) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the attractive appearance, good condition, and value of the Lots in the Project, then the Association may take any action allowed for a failure to comply with the Declaration, and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Management Committee determines to be required, and requesting that the same be carried out within a period of not less than thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may cause corrective action to be taken (which may include landscaping and

completing repairs and replacements of structures on the Lot) and assessing the Owner for all costs associated therewith.

- 4.6 Utilities. All utilities for individual Lots (except those utility costs that are metered collectively and paid for by the Association as a Common Expense item) will be metered separately to each Lot, and such utility charges shall be the responsibility of the Lot Owner.

**ARTICLE 5
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 5.1 Organization of Association. The Association shall serve as the organizational body for all Owners.
- 5.2 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 Legal Organization. The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 5.4 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one (1) Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.
- 5.5 Availability of Documents. The Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term "available" as used in this section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, unless a shorter time period is required by law, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Management Committee determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

5.6 Management Committee. The governing body of the Association shall be the Management Committee elected pursuant to the Bylaws. The Management Committee shall consist of three (3) members. Except as otherwise provided in the Declaration or the Articles of Incorporation, the Management Committee shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. The Management Committee may create Sub-Committees to consider issues and advise the Management Committee and may further delegate its authority on any issue to a Sub-Committee made up only of Management Committee Members. The creation and operation of Sub-Committees shall be as provided for in the Bylaws. Except as may be specifically provided in the Declaration, Articles of Incorporation, or by applicable law, no Owner or group of Owners, other than the Management Committee, may direct the actions of the Association.

5.7 Committee Members.

a. Qualification.

1. To be on the Management Committee, a Person must be an Owner, or spouse of an Owner, and over the age of eighteen (18) years. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principal, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee. Co-Owners of a Lot may not serve concurrently as Committee Members, unless one or all co-Owners serving on the Management Committee also have an ownership interest in another Lot.
2. In accordance with Utah Code Ann. § 57-8a-502(3)(a), a majority of the Management Committee members must be Lot Owners. At least two Management Committee members must have as their primary residence a Lot in the Project.

5.8 Limitation on Authority of Owners, Committee Members, Officers, and the Management Committee.

- a. Except as provided herein, or in the Bylaws, the Management Committee, any individual Owner, and any individual Committee Member or Officer shall have no authority to, and may not, act on behalf of the Association or the Management Committee to:
1. Amend or terminate any Governing Document;
 2. Elect or remove members of the Management Committee;
 3. Establish or change the qualifications, powers and duties, requirements, or terms of Committee Members or of the Management Committee; or
 4. Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

5.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization from the Management Committee, any officer, or any member of the Management Committee, contrary to or exceeding the

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

- 5.10 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

ARTICLE 6

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 6.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided for by law:
- a. Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association.
 - b. Paying Expenses. The Association shall provide for the payment of Association expenses.
 - c. Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
 - d. Entering Lots. After having given the appropriate notice as required in Article 17, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Lot to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
 - e. Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
 - f. Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Management Committee in the management and operation of the Project, and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Management Committee shall have the right to

approve Association budgets and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT: (1) INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS, (2) THAT PROVIDES FOR ANY TERMINATION FEE, (3) THAT HAS A REQUIREMENT FOR TERMINATION ON MORE THAN 30 DAYS' NOTICE, OR (4) REQUIRES TERMINATION OF THE MANAGER FOR CAUSE.**

- g. Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- h. Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services or other services paid as a common expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- i. Discretion in Enforcement.
 - 1. Subject to the discretion afforded in this section, the Management Committee shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - 2. The Management Committee shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
 - i. whether to compromise a claim made by or against the Management Committee or the Association; and
 - ii. whether to pursue a claim for an unpaid Assessment.
 - 3. The Association may not be required to take enforcement action if the Management Committee determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:
 - i. the Association's legal position does not justify taking any or further enforcement action;
 - ii. the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law;
 - iii. (A) a technical violation has or may have occurred; and (B) the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or

- iv. it is not in the Association's best interest to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- 4. Subject to Subsection (5), if the Management Committee decides under Subsection (2)(ii) to forego enforcement, the Association is not prevented from later taking enforcement action.
- 5. The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- j. Reserve Fund. The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 19 of this Declaration.
- k. Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing, and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two (2) weeks' notice of the hearing to the Owners; and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- l. Annual Meeting. The Association shall arrange for and conduct an annual meeting at least once annually as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- m. Payoff Information Fees. The Association is specifically authorized to establish a fee of fifty dollars (\$50.00) to provide payoff information related to the transfer, refinance, or closing of a Lot. The Management Committee may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.
- n. Reinvestment Covenant upon Sale or Transfer of Lot. The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46, in an amount up to one half of one percent (.5%) of the value of the Lot at the time of the transfer. A transfer is any change in the ownership of the Lot as reflected in the office of the county recorder, regardless of whether it is pursuant to the sale of a Lot or not. If a fee is required, the amount shall be set forth by the Management Committee in the Rules. The value of the Lot for purposes of this section shall be the higher of: (1) the value of the Lot as determined by the property tax assessor on the date of the transfer of title; (2) the

purchase price paid for the Lot related to the transfer; or (3) the value of the Lot on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association, using an appraiser selected by the transferee of the Property from a list of ten (10) appraisers selected by the Association. All or a portion of the reinvestment fee shall be used to pay the Association's costs directly related to the transfer of the Lot, not to exceed two hundred fifty dollars (\$250.00). The reinvestment fee may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed two hundred fifty dollars (\$250.00). The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

- o. **Bulk Services Agreements.** The Association shall have the right to enter into agreements, as the Management Committee deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and, in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment. After turnover, the Management Committee and the Association shall not have any authority to enter into any new such agreement that: (1) is of any duration longer than five (5) years, (2) automatically renews at the end of its term, or (3) provides for any permanent easement over any part of the property. Any agreement entered into in violation of this provision shall be null and void.
- p. **Project Air Space, Drones, and Unmanned Aircraft.** The Association has the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property, including over Lots. To the extent allowed by state and federal law, the Association also has the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property, and (2) in any airspace within 1,000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Project's airspace will not subject the Association to liability for

damages to persons or property relating to the operation of such a device. Any Owner or tenant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device, and (2) indemnify and defend the Association, its manager, and all officers and Management Committee members (past or present), from any claims related to the device. The Association has the power to establish Rules implementing this section that may include, and are not limited to, the following: (1) requiring Owners to provide information about and/or photographs of the device to the Association, (2) requiring flying devices to be marked with the Owner's name or other information, (3) establishing certain areas, hours, minimum or maximum height limitations, or banning flying of devices completely, (4) banning altogether or designating required commercial drone delivery landing sites, and (5) any other reasonable Rules related to the flying of devices.

ARTICLE 7 BUDGETS & ASSESSMENTS

- 7.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 Budget and Regular Assessments.
- a. The Management Committee is authorized and required to adopt a budget for each fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Management Committee may revise that budget from time-to-time as it deems appropriate.
 - b. The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Management Committee deems appropriate.
 - c. The Management Committee shall: (1) present the adopted budget and any revised budget to the Owners at a meeting of the Owners, and (2) make the adopted budget available on a website accessible by Owners or send a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget. The failure to comply with this subsection 7.2(c) shall not be grounds to invalidate any budget.
 - d. Only so long as the law requires it, the Management Committee shall comply with this Subsection 7.2(d). If a budget is disapproved under this Subsection, the budget that the Management Committee last adopted, and which was not disapproved by Owners, continues as the budget until and unless the Management

Committee presents another budget to the Owners and that budget is not disapproved. A budget shall be disapproved if within forty-five (45) days after the date of the meeting at which the Management Committee presents the adopted budget:

1. there is a vote of disapproval by at least fifty-one percent (51%) of all the Allocated Interests of the Owners; and
 2. the vote is taken at a special meeting called for that purpose by the Owners pursuant to the Association's Governing Documents.
- e. The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Lot by multiplying the total budgeted amount by the Allocated Interest for each Lot.
- 7.3 Payment of Regular Assessments. Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 Adjustments to Regular Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner shall, thereafter, pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 7.5 Personal Obligation for Assessment. Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed, or other instrument, and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner, and with the Association, to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due.
- 7.6 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.
- 7.7 Percentage Assessments. Except as otherwise provided herein, all Assessments, other than special Assessments to individual Lots, shall be allocated to all Owners based on the Allocated Interest of each Lot.
- 7.8 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration, and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid

balances. The failure of the Association to send a statement to an Owner, or an error in any such statement, other than a certificate of payment described in Section 7.9, shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 7.9 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments, or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge of fifty dollars (\$50.00) or such other amount as allowed by law and provided for in the Rules may be collected by the Management Committee for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Management Committee (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 7.11 Special Assessments to Individual Lots. Special Assessments may be levied by the Association against a particular Lot and its Owner for:
- a. Costs incurred in bringing an Owner or the Owner's Lot into compliance with the provisions of the Governing Documents;
 - b. Any other charge designated as pertaining to an individual Lot in the Governing Documents;
 - c. Fines, late fees, collection charges, and interest; and
 - d. Attorney fees, costs and other expenses relating to any of the above.
- 7.12 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Management Committee.
- 7.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Lot in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 7.14 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.15 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

ARTICLE 8

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

- 8.1 Delinquency. Assessments not paid within the time required shall be deemed delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its discretion, invoke any or all of the remedies granted in this Article 8.
- 8.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: (a) monthly Assessments shall be due and payable on the first (1st) of the month, and late if not received by the tenth (10th) of that month; (b) late fees shall be thirty-five dollars (\$35.00) for each month that an Owner's account has an unpaid balance after the due date; (c) in addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at two percent (2%) per month; and (d) the Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable charge imposed by a Manager related to collections, as the Management Committee may establish in the Rules.
- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this Section 8.3 is separate and distinct from any lien rights associated with the Lot.
- 8.4 Lien. The Association has a lien on each Lot for all Assessments, which include, but are not limited to, interest, collection charges, late fees, fines, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall

have priority over each other lien and encumbrance on a Lot with the exception of: (a) a lien or encumbrance recorded before this Declaration is recorded; (b) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.

- 8.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one (1) remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorneys' fees and court costs will, thereafter, be added to the delinquent amount (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring an action of law or lien foreclosure against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 Foreclosure Sale and Appointment of Trustee. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. For purposes of pursuing foreclosures on behalf of the Association, the Declarant appoints John D. Morris as trustee, pursuant to Utah Code Ann. § 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to John D. Morris with power of sale, each of the Lots and all improvements to the Lots for the purpose of securing payment of Assessments under the terms of the Declaration. An Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale to the trustee for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 Homestead Waiver. Pursuant to Utah Code § 57-8a-301(5), the Association's lien rights against a Lot are not subject to any Owner's homestead exemption. In addition, each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time-to-time hereafter.
- 8.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (a) rights to receive a utility service paid for by the Owner as a Common Expense; and (b) access to recreational facilities.
- 8.9 Requiring Tenant to Pay Rent to Association. Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Lot for which an Assessment is more than sixty (60) days late.
- 8.10 Attorney Fees Incurred as a Result of a Default. In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments,

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

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

ARTICLE 9 PROPERTY RIGHTS IN LOTS AND COMMON AREA

- 9.1 General Easements to Common Area and Lots.
- a. Subject to all other terms of the Governing Documents, each Owner shall have an equal, undivided interest, right, and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Lot over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Lot, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Management Committee.
 - b. The Association shall have nonexclusive easements with the right of access to each Lot to enforce this Declaration, to make inspections, to prevent or mitigate damage to Lots and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Lot that the Association is responsible for maintaining which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.

- 9.2 **Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Management Committee to be helpful in serving the Project, Lots, or Lot Owners in the Project, are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Lots by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over, or under the Common Area or Lots for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way, and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agrees to execute promptly all such documents and instruments, and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Lot.
- 9.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Lot as a result of the manner in which the buildings, structures, or fixtures are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the structure.
- 9.4 **Limitation on Easement—Suspension of Owner's Rights.** An Owner's equal, undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- a. The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (1) for any period during which an Assessment on such Owner's Lot remains unpaid; (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (3) for successive sixty (60) day periods, if any such infraction is not corrected during any prior sixty (60) day suspension period;
 - b. The right of the Association to impose reasonable limitations on the number of Occupants and guests per Owner who at any given time are permitted to use the Common Area;

- c. The right of the Association to impose requirements for anyone to use the recreational facilities, including the signing of releases and providing confirmation of identities and ages; and
- d. The right of any governmental or quasi-governmental body having jurisdiction over the Project to access, and to have rights of ingress and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

9.5 Views. Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.

ARTICLE 10 USE LIMITATIONS AND CONDITIONS

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code § 57-8a-218 are hereby modified to not apply to the Association.
- 10.2 Signs & Decorations. The Association may regulate and restrict Signs and Decorations in the Project, to the extent permitted by law, in the Rules. Signs and Decorations are prohibited from being hung or displayed on a Dwelling or Lot except as permitted by the Management Committee in the Rules or by the Management Committee in writing. "Signs" shall refer to any temporary or permanent medium, display, or device (including banners, placards, decals, posters, billboards, flags, stickers, wraps, brochures, and yard signs) that visually communicates or identifies any message, symbol, icon, endorsement, idea, concept, logo, insignia, business, group, team, event, or other thing or concept, or that is intended to communicate or identify any of the same. "Decorations" shall refer to any temporary medium, display, or fixture anywhere in the Project except on the interior of any structure.
- a. Displaying the American Flag. Notwithstanding the foregoing section 10.2, Occupants may display a reasonably sized American flag on the Lot consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. The flag must also be displayed in accordance with the provisions of United States Code Title 4, Chapter 1.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 10.4 Smoking. It shall be a nuisance and prohibited under Section 10.3 to permit or cause any smoke to drift or otherwise enter into another Lot or the Common Area such that any

other Owner can smell or is disturbed by the smoke. Neither an Owner complaining of smoke or the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project, or to any Lot, to prevent drifting smoke from entering into that Lot or onto any patio or balcony associated with that Lot. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Lot or Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking on a Lot or in the Project.

- 10.5 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein (except for on a Lot for a period of time not in excess of 24 hours), unless it is approved by the Management Committee.
- 10.6 Parking. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, without limitation: (a) the right to remove or cause to be removed any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles parked on Lots (outside of garages) and in Roadways; (c) restrictions on the time period and duration parking; and (d) the Assessment of fines to Owners who violate the Rules, or Owners associated with people who violate such Rules. The Association may restrict entirely or limit parking on roadways in the Project, in Common Area, or on public streets by Owners and by people associated with the use of Lots. These restrictions and limitations may apply to public and private roadways within the Project and within five hundred (500) feet of any boundary of the Project.
- 10.7 Window Covers. The Management Committee may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.
- 10.8 External Laundering. Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited in the Project. If permitted, external laundering and drying of clothing and other items shall only be permitted in places on Lots not visible from Common Areas.
- 10.9 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Lot shall be permitted.
- 10.10 Repairs. No repairs of any detached machinery, equipment, or fixtures, including, without limitation, motor vehicles, shall be made within the Project except as may be permitted by the Management Committee in the Rules or except as may be made inside of a fully enclosure permanent structure on a Lot.
- 10.11 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. Refuse containers shall be prohibited in any Lot unless obscured from view of adjoining Lots and Common Area. Rubbish, debris, and unsightly and offensive materials shall be properly and promptly disposed of.

- 10.12 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project subject to the Rules and requirements of this Declaration. No more than three (3) animals in excess of five pounds may be kept in a Lot. No livestock, poultry, or reptiles may be kept in any Lot. All animals are subject to the Rules adopted by the Management Committee. Notwithstanding the foregoing, no animal may be kept within a Lot which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up on, in, and around the Project. The Management Committee may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration, including, but not limited to, requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, and noise and barking limitations. In an effort to minimize anxiety and fear of the Owners generally, or as may be otherwise required or beneficial for the Association to obtain insurance coverage, the Association may ban dogs of certain breeds (pure or partial) believed generally to be aggressive, including, but not limited to, the following breeds: Pit Bull, Presa Canario, Chow Chow, Doberman Pinscher, Alaskan Malamute, and Rottweiler.
- 10.13 Landscape Maintenance. The Management Committee may establish standards for the maintenance of landscaping on Lots.
- 10.14 Residential Occupancy.
- a. No trade or business may be conducted in or from any Lot unless:
 1. the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the Lot;
 2. the business activity conforms to all zoning and legal requirements for the Project and the business activity;
 3. the business activity does not involve Persons coming onto the Project who do not reside within the Project, or solicitation of Occupants or Owners in the Project;
 4. the business activity is consistent with the residential character of the Project and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;
 5. the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Lot for such activity, and a description of any impact on the Project or anyone in the Project;
 6. the business activity will not result in the increase of the cost of any of the Association's insurance;

7. the Owner of the Lot resides in the Lot in which the business activity is proposed for the entire time any business activity is conducted; and
 8. the Management Committee's ongoing reasonable requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- b. No Lots may be used for a timeshare property.
 - c. Except as provided in Section 10.15(a), no Lot may be used for any purpose other than a residential purpose.
- 10.15 No Subdivision or Timeshare of Lots or Recording by Owners of Terms and Conditions. No Lot shall be split, subdivided, separated or timeshared into two (2) or more Lots or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease part of a Lot or residence. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one (1) Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot or the Project shall be recorded on the Project unless the Management Committee and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section 10.17 shall be null, void, and of no legal effect.
- 10.16 Architectural Control. The Management Committee may require that no construction or exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee or any committee established by the Management Committee for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, excavation, patio covers, screens, door replacement, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, and other work that in any way alters the exterior appearance of the Lot or any structure or fixture on the Lot. The Management Committee, or committee established by the Management Committee for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Management Committee. Such designations may be adopted for the purpose of achieving uniformity of appearance, preservation, and enhancement of Property values.
- 10.17 Lighting. The Management Committee may establish standards for the approval and installation of exterior lighting fixtures and walkway/landscaping lights, including the regulation of indoor lighting visible from the exterior of the Lot.
- 10.18 Variances. The Management Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Management Committee determines, in its discretion and by unanimous vote: (a) either: (1) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant; or (2) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project,

and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Management Committee. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears, after reasonable investigation under the circumstances, that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner, either voluntarily or involuntarily, through foreclosure.

10.19 Hazardous Substances.

- a. The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate for/to the maintenance of a Lot or the Project.
- b. Each Owner shall indemnify, defend and hold the Association, and each and every other Owner, harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.21 shall survive any subsequent sale by an indemnifying Owner.
- c. As used in this Section 10.21, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.21, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

ARTICLE 11 INSURANCE

- 11.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone

policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies.

- 11.2 Annual Insurance Report. The Management Committee may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; and (c) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association, and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

11.3 Property Insurance.

- a. Hazard Insurance.
1. Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the Common Area and all fixtures and equipment thereon.
 - i. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies.
 - ii. At a minimum, the blanket policy shall afford protection against loss or damage by all perils normally covered by “special form” property coverage.
- b. Flood Insurance.
1. If any part of the Common Area is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance may be maintained covering the Project or that portion of the Project located within the Special Flood Hazard Area in an amount deemed appropriate.
 2. If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by the property insurance.

- c. Earthquake Insurance. The Association may purchase earthquake insurance as the Management Committee deems appropriate.
- d. Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- e. Association's Right to Not Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Management Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (1) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Lot, to the amount of the Association's policy deductible; (2) the Association is responsible for any loss to any Common Area; (3) an Owner who does not have a policy to cover the damage to that Owner's Lot is responsible for that damage and the Association may, as provided in section 11.3(b)(3)(iii), recover any payments the Association makes to remediate that Lot; and (4) the Association need not tender the claim to the Association's insurer.
- f. Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 11.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

11.4 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall not be less than three million dollars (\$3,000,000.00) covering all claims for death of or injury to any one Person or Property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

11.5 Directors' and Officers' Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary

claims; (c) provide for the coverage of claims made under any fair housing act or similar statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three (3) months regular Assessments and the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (1) Officers and Management Committee members of the Association; (2) employees and volunteers of the Association; (3) any Manager of the Association; and (4) officers, members of the Management Committee, and employees of any Manager of the Association.
- 11.7 Workers' Compensation Insurance. The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers' compensation insurance even if the Association has no employees, as the Management Committee deems appropriate.
- 11.8 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and, upon written request, to any Owner or Lender.
- 11.9 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after paying for any necessary action related to the property, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Lots. The cost of repair or replacement of any Lot in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Lot. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of

liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

- 11.11 Insurance Trustee. In the discretion of the Management Committee or upon written request executed by Owners holding fifty percent (50%) of the Allocated Interests, the Management Committee shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Management Committee (as the case may be) shall require.
- 11.12 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner’s authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 Waiver of Subrogation against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Lot Owner if an Owner resides in the Lot, and the Association’s agents and employees.
- 11.14 Right of Action. Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to Property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.15 Applicable Law. This Declaration is specifically subjecting the Association to the current insurance requirements in the Act. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 12 DESTRUCTION OF IMPROVEMENTS

- 12.1 Reconstruction. In the event of partial or total destruction of a building, fixture, structure, or amenity on the Common Area within the Project, the Management Committee shall promptly take the following actions:
- a. Ascertain the cost of reconstruction by obtaining bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds;
 - b. Determine and liquidate (or otherwise make available for construction) the amount of insurance proceeds, if any;
 - c. Determine in the discretion of the Management Committee whether the vote of the owners is appropriate to materially change, remove, or add any fixture in the Common Areas, as otherwise provided in the Declaration, and if appropriate have the vote;
 - d. Cause the repair and replacement to proceed paying for any necessary repairs and replacements with insurance proceeds and special assessments, as may be

necessary and consistent with restoring and repairing the property, subject to the determination in any vote pursuant to 12.1(c).

**ARTICLE 13
EMINENT DOMAIN**

- 13.1 Total Taking of a Lot. If a Lot is taken by eminent domain, or sold under threat thereof, or if part of a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Lot. Upon such a taking, unless the decree otherwise provides, that Lot's Allocated Interest shall automatically be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes any adjustment required under this Section. Any remnant of a Lot remaining after part of a Lot is taken shall become part of the Common Area.
- 13.2 Partial Taking of a Lot. Except as provided in Section 13.1, if part of a Lot is taken by eminent domain, or sold under threat thereof, so that such Lot may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Lot. Upon such a taking, unless the decree otherwise provides, that Lot's Allocated Interest shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Lot, the reduced amount shall automatically be reallocated to that Lot and the remaining Lots in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interest.
- 13.3 Taking of Common Area. If the portion of the Project taken by eminent domain is Common Area, the award attributable to the taking shall be paid to the Association and the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 13.4 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.5 Priority and Power of Attorney. Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. This power-of-attorney shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

**ARTICLE 14
TERMINATION**

- 14.1 Required Vote. Except as otherwise provided in Article 12 and Article 13, the Project may be terminated only by the approval of Owners holding ninety percent (90%) of the Allocated Interests.
- 14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Tooele County, Utah, and is effective only on recordation.
- 14.3 Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, provided that the contract is conditioned on the termination of the Project. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Lot in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.5 Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Lot. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Lots that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Lot for purposes of distributing proceeds shall be determined by an appraisal of each Lot, conducted by an independent appraiser selected by the Management Committee. If any Owner disputes the appraised amount, they shall notify the Management Committee of the dispute within ten (10) days of receiving notice of the value of that Owner's Lot. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly, with the Association's appraiser, select a third appraiser to appraise the Lot. That appraisal shall be final as to the value of the Lot, regardless of

whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.

- 14.6 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purposes, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

ARTICLE 15 AMENDMENTS

- 15.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Lot is sufficient if there are multiple Owners of the Lot.
- 15.2 Scope of Amendments. This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association or, if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.
- 15.3 Execution and Effective Date of Amendments. An amendment that has been adopted, as provided herein, shall be executed by the Management Committee, through its agent, who shall certify that the amendment has been approved and adopted, and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Tooele County, Utah.
- 15.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of Owners holding sixty-seven percent (67%) of the Allocated Interests in the same manner as required in Section 15.1 to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat, including the addition or removal of amenities, increasing the size of Lots, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot or Limited Common Area, that Lot Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of

whether they approved of, or consented to, the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

15.5 Amendment to Conform to Law. The Management Committee may, without the approval of the Owners, amend this Declaration to conform it to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs, or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- a. The Association must obtain from an attorney who has a significant experience and a regular practice in area of Community Association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section;
- b. The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded;
- c. The Management Committee must provide the Owners with: (1) the proposed amendment instrument; (2) the language of this Section of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit Owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association: (i) notifies the Owners that it intends to amend the Declaration pursuant to this section; (ii) provides the Owners a right to object to the amendment within thirty (30) days; and (iii) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;
- d. Within forty-five (45) days of providing Owners the notice and information required by this Section, unless Owners holding more than thirty percent (30%) of the Allocated Interests have objected to the amendment, the Management Committee is authorized to sign and record the amendment; and
- e. Having otherwise complied with all of the requirements of this section, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interests objected after having received the notice required in this Section. The amendment shall be effective upon the recording of the same in the office of the recorder of Tooele County, Utah.

ARTICLE 16
INTERPRETATION, CONSTRUCTION, AND APPLICATION
OF DECLARATION

- 16.1 No Waiver. Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance, or on any particular occasion, shall not be deemed a waiver of such right of enforcement as to that breach, and any such future breach of the same, or any other Term and Condition.
- 16.2 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Plat, the Declaration, the Articles, the Bylaws, and then the Rules.
- 16.3 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, simultaneously, consecutively, or alternatively.
- 16.5 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community, and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against, or strictly for or against, the Declarant, Association, any Owner, or any other Person subject to their terms.
- 16.7 Applicable Law. This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of the recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law, this Declaration expressly states that such amendments shall be applicable, or unless the Association makes those amendments applicable by amendment to the Declaration.

- 16.8 Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neutral, and vice versa.
- 16.9 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable, in whole or in part, for any reason.

ARTICLE 17
NOTICE

- 17.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- a. Notice to an Owner from the Association.
 - 1. Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - i. by a written notice delivered personally to the Owner, which shall be effective upon delivery;
 - ii. by a written notice placed in first-class, U. S. mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed delivered five (5) days after such deposit;
 - iii. by written email correspondence to an Owner: (A) that is sent to an email address provided by the Owner for the purpose of Association communications; or (B) that is emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered five (5) days after it is sent. The Association shall comply with any notice from an Owner that an email address is no longer being used or that designates an alternative email address for use by the Association; or
 - iv. by any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
 - 2. Notwithstanding Subsection (1) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

3. In the case of co-Owners, notice to one (1) of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one (1) notice per Lot, whether electronic or not. In case any two (2) co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class, U.S. mail to the Lot.
 4. In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to a residence on the Lot and any such posting may be removed by the Association the sooner of either: (i) two (2) days after the event or action for which notice was given; or (ii) ten (10) days after the posting.
- b. Special Notice Prior to Association Entry into a Lot.
1. In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Lot immediately and without any notice.
 2. In case of any emergency involving immediate and substantial damage to the Common Areas or to another Lot, before entering a Lot the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Lot; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Lot on behalf of the Association, then wait one (1) minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry. Under no circumstances shall the Association or any representative enter a residence or structure on a Unit without the permission of an Owner.
 3. If the Association enters a Lot for any purpose permitted in this Declaration other than those identified in the prior two (2) paragraphs, before entering a Lot, the Association shall: (i) give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (A) that the Association or its authorized Persons will enter the Lot; (B) the date and time of the entry; (C) the purpose of entering the Lot; (D) a statement that the Owner or Occupant can be present during the time the Association is in the Lot; (E) the full names of any Person who will be entering into the Lot, and the phone numbers and addresses of the Persons entering the Lot or of the company for whom the Persons entering the Lot are employed for the purpose of entering the Lot; and (F) any other information the Association deems appropriate to include; and (ii) post the written notice described above on the front door to the Lot at least seven (7) days prior to entry into the Lot.
- c. Notice to a Lender. Notice to a Lender shall be delivered by first-class, U. S. mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender.

Any notice so deposited in the mail shall be deemed delivered five (5) days after such deposit.

- d. Notice to Association from an Owner.
1. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - i. by a written notice delivered personally to the Manager, which shall be effective upon delivery;
 - ii. by a written notice placed in first-class, U. S. mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered five (5) days after such deposit; or
 - iii. by written email correspondence to the Association: (A) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications; or (B) that is sent to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered five (5) days after it is sent.

ARTICLE 18 ATTORNEY FEES AND COSTS

- 18.1 Legal Costs Associated with Disputes with Owners.
- a. In any lawsuit related to the Association or the enforcement of the Governing Documents, that occurs between an Owner and the Association or between any Owner and any other Owner, the prevailing party shall be entitled to recover all reasonable attorney fees and costs.
 - b. Owners Liable for Fees Incurred in Dispute. If an Owner has failed to comply with the Governing Documents and the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that it intends to enforce the Term and Condition, or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
 - c. Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not typically included in costs, as the term is used in the Utah Rules of Civil Procedure.
 - d. Exception to Owner's Liability for Fees and Costs. If, related to: (1) any dispute with an Owner; (2) any challenge by an Owner to a position of the Association on a Term and Condition; or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs

related to the interpretation and application of a Term and Condition that: (i) the Association could not establish an initial position on without having incurred the fees and costs; or (ii) results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner but shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to an Owner and the issues arise as part of the lawsuit.

ARTICLE 19 RESERVES

19.1 Requirement for Reserves. The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Management Committee annually, pursuant to the following provisions:

- a. Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
- b. Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- c. Segregation of Reserves. The Association shall segregate money held for reserves from regular operating money and other financial accounts.
- d. Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve Analysis shall, at a minimum, estimate the need for and appropriate amounts for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Areas that have a useful life of three (3) years or more. The Reserve Analysis and updates shall project a minimum of thirty (30) years into the future.
- e. Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person or Persons with: (1) experience in current building technologies; (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- f. Disclosure and Approval at Annual Meeting. Annually, at the annual meeting or a special meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the Reserve Analysis and provide an opportunity for Owners to discuss reserves and how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this

Section and indicate in the minutes any decision relating to funding a reserve fund.

**ARTICLE 20
LEASING AND NON-OWNER OCCUPANCY**

- 20.1 Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Lot shall be governed by this Article, the Rules, and procedures adopted as allowed in this Article.
- 20.2 Definitions. For the purpose of this Article:
- a. "Non-Owner Occupied Lot" means:
 - 1. for a Lot owned in whole or in part by an individual or individuals, the Lot is occupied by someone when no individual Owner occupies the Lot as the individual Owner's primary residence; or
 - 2. for a Lot owned entirely by one (1) or more entities or trusts, the Lot is occupied by anyone.
 - b. "Family Member" means:
 - 1. the parent, sibling, or child of an Owner and that Person's spouse and/or children; or
 - 2. in the case of a Lot owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot if the trust or other estate planning entity that owns the Lot was created for the estate of: (i) a current Occupant of the Lot; or (ii) the parent, child, or sibling of the current Occupant of the Lot.
- 20.3 No Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 20.4 and 20.5, any Lot may be leased or Non-Owner Occupied.
- 20.4 Permitted Rules. The Management Committee may adopt Rules requiring:
- a. reporting and procedural requirements related to Non-Owner Occupied Lots, and the Occupants of those Lots, other than those found in this Article 20, including requiring informational forms to be filled out by Owners and/or residents identifying non-Owner Occupants and their vehicles, phone numbers, etc.;
 - b. reasonable fees related to the administration of leased and Non-Owner Occupied Lots; and
 - c. other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.
- 20.5 Requirements for Leasing and Non-Owner Occupancy. The Owners of all Lots must comply with the following provisions:
- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a

default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall, nonetheless, be deemed to be part of the lease or agreement and binding on the Owner and the resident;

- (b) If required in the Rules, or requested by the Management Committee, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time-period provided for in the Rules or by the Management Committee;
- (c) A Non-Owner Occupant may not occupy any Lot for transient, short-term (less than twelve (12) months), hotel, resort, vacation, or seasonal use (whether for pay or not);
- (d) Daily and weekly occupation by Non-Owner Occupants is prohibited (whether for pay or not); and
- (e) The Owner(s) of a Lot shall be responsible for the Non-Owner Occupant's or any guests' compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for noncompliance with this Declaration, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Management Committee, and the Manager shall not have any liability for any action taken pursuant to this subparagraph, and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

20.6 Exceptions for Family Members. If only Family Members occupy a Lot, then notwithstanding anything to the contrary herein:

- a. Subsections 20.5(a), 20.5(c), & 20.5(d) of Section 20.5 shall not apply to that occupancy;
- b. No written agreement regarding occupancy needs to be created between the Family Member(s) and the Owner; and
- c. Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Management Committee until an Occupant has violated a provision of the Governing Documents and, if requested, may only be requested related to remedying or taking action as a result of such a violation.

ARTICLE 21 GENERAL PROVISIONS

- 21.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 No Liability of Officials. To the fullest extent permitted by applicable law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of

any decision, approval or disapproval, course of action, act, omission, error or negligence.

- 21.3 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area, and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act that an Owner or any intentional or negligent act of any Occupant of that Owner's Lot, to the extent such losses and damages are either under the deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot, and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents, and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents, and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.
- 21.6 Security. The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason, including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct, and expressly acknowledges that no duty is owed to anyone

such as that of a landlord or retail business. By purchasing a Lot in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Management Committee are not insurers of the safety or well-being of Owners or Occupants, or of their personal property, as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim, and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 21.7 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area, the Limited Common Area, or the buildings, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

ARTICLE 22 DECLARANT RIGHTS

- 22.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the rights provided for in this Article 22. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, they shall all, nonetheless, be subject to the terms in this Article 22.
- 22.2 Right to Appoint the Management Committee during Control Period. The Declarant shall have the right to appoint and remove all Management Committee Members during the Declarant Control Period. In the appointment of Committee Members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of fewer than the required number of members until the Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.

- 22.3 Control Period. Declarant shall have the right to retain control, power, and authority over, and all decision-making ability or authority for, the Association and/or the Project during the "Control Period." The Declarant shall determine whether to hire professional management during the Control Period. The Control Period shall extend until the Declarant elects, in writing, to terminate the Control Period.
- 22.4 Easement Rights. The Declarant shall have an easement for access across the entire Project and may utilize, allow others to utilize, or may grant easements over and through any easement right reserved to anyone in the Declaration.
- 22.5 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Lot that has any boundary modified by the Plat.
- 22.6 Assessment Rights. The Declarant shall have the right to establish all budgets and set all Assessments, regular and special, during the period of Declarant Control. Notwithstanding the Assessment of other Lots, no Lots owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments and in the amount Declarant elects to pay Assessments.
- 22.7 Right to Amend Declaration, Plat, Bylaws, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, Plat, the Bylaws, and the Rules in any way, and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners; except that the Declarant cannot change the boundaries of any Lot not owned by the Declarant. Any such amendment to the Bylaws, Plat, or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer or Manager of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein, including all Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Lot.
- 22.8 Expansion of Project/Additional Land. The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason. Declarant may convert any Parcels identified on the Plat, except Parcel A, to Lots of any size and configuration.
- 22.9 Assignment of Special Declarant Rights. Declarant may, at any time, by recording a written notice, assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person or entity prior to the end of the Declarant Control Period.
- 22.10 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration or the Rules as it relates to the Lots owned by the Declarant.
- 22.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents, and specifically in this Article 22 and Article 23, shall not be substantively

or procedurally altered without the written consent of the Declarant until fourteen (14) years have passed after the Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declarant or any provision of Article 22 or Article 23, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 22 or of Article 23 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.

- 22.12 Use of Lots and Common Areas. During the Declarant Control Period, the Declarant shall have the right to use any Lot owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Lots owned by the Declarant, or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one (1) or more sales offices and model Lots. Such offices and model Lots may be located in any Lot with the permission of the Owner of that Lot, who may be the Declarant, or in one (1) or more separate structures, trailers, or facilities placed on the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices, at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only, or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Lots, signs, banners, or similar structures or devices.
- 22.13 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article do not impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and any Owner hereby expressly waive and disclaim any such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the special declarant rights.
- 22.14 Declarant Exemption from Statutory Obligations. Pursuant to Utah Code Ann. §57-8a-217(6), Declarant is hereby exempt from the provisions of § 57-8a-217. Pursuant to Utah Code Ann. § 57-8a-211(10), Utah Code Ann. § 57-8a-211(2)-(9) shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Declarant Control Period.
- 22.15 Water Shares. Without any required payment from the Association, the Declarant shall transfer to the Association water shares for twenty-four (24) acre feet of water, the amount required by applicable municipalities approving this project. Water rights shall be transferred upon certification by the division of water rights. The Declarant shall have up to 5 years from the date this Declaration is recorded to cause the transfer of ownership to be completed and shall provide for the leasing of water shares and rights up to that time. There is no guarantee or warranty that this amount of water will keep any lake on Parcel

A full, due to potential leakage, evaporation, and other conditions. It will be the responsibility of the Association to purchase any necessary additional water shares to properly maintain lake levels for any lake on Parcel A.

**ARTICLE 23
CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION**

- 23.1 **Statement of Intent.** 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 the Owner is purchasing, or any aspect of the Project including all Common Areas; all prior to purchasing a Lot. Moreover, if any warranty has been provided, a warranty has been provided to each initial Owner identifying those 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 Area are in at the time of purchase, it is acknowledged that it is unfair and improper to then 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 certain conflicts in that it is 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 agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms, and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce, from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners, by and upon the purchase of a Lot, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages arising from defects of any kind related to construction or development of the Project. The intent of this Section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the buildings and fixtures on the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.
- 23.2 **Association Warranties.** The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty

by the Declarant that any warranties will be provided, or that the warranties will cover any particular component or aspect of the Project.

- 23.3 **Owner Warranties.** The Declarant may have provided certain warranties to the Owners related to the Lot purchased. The first Owner of a Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties from the Declarant to any Owner, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.
- 23.4 **Waiver of Subrogation and Release.** The Association and each Owner waives any right to subrogation against the Declarant and any builder 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 and builder, their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant and builder, their officers, employees, owners, and representatives from any and all liability and losses 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 against all losses and liabilities and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from any claims barred or released by this provision, including, but not limited to, any claim brought under any right of subrogation.
- 23.5 **Declarant and/or Builder Litigation.**
- a. An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed: (1) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; and (2) if the dispute is not resolved within the 180-days Right to Cure period, the parties agree to mediate the dispute prior to taking further action. 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, including any mediation or arbitration, shall be stayed for the 180-days period.

- b. For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Developer, builder, or subcontractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall mutually work, in good faith, to agree upon the arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the arbitration rules and this Declaration.
- c. "Notice of Claim" shall mean and include the following information: (1) the nature of the claim; (2) a specific breakdown and calculation of any alleged damages; (3) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (4) photographs of any alleged condition, if applicable; (5) samples of any alleged defective conditions or materials; (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (7) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- d. Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant or builder, or any of their officers, directors, members, employees, or agents for any reason, including, but not limited to, alleged construction defects, any related damages, or any damages arising therefrom.
- e. Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, or any of their officers, directors, members, employees, or agents for any reason, including, but not limited to, alleged construction defects, any related claims, or any damages arising therefrom.
- f. The Association shall indemnify against all losses and liabilities and defend the Declarant, the builder, and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in, or related to, the Project and/or any damages arising therefrom. By purchasing a Lot, the Owner specifically disclaims and releases the Declarant and the builder from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that these warranties, if provided, and

whatever coverage they might provide, are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Lot, the Owner agrees to defend the Declarant and builder (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim, and to indemnify Declarant and builder from any liability arising therefrom.

- g. Subject only to the provisions in the Owner Warranties (if any) and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Lots, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the fullest extent allowed by law.
- h. If otherwise allowed by law, notwithstanding the terms of this Declaration, or if allowed in this Declaration, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant, or any builder or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have a meeting of the Owners, with proper notice, and have all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those people present, including the Management Committee, must permit discussion among the Owners and questions from the Owners, and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the meeting must include the following information: (1) a statement must be made on the first page of such notice in bold, upper case, and not less than twenty-two (22) point font: "The Association is contemplating serious, potentially time-consuming and expensive litigation against the Declarant of this Project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of and your ability to sell your Lot while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue."; (2) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation, including a breakdown of any costs and fees to be advanced by anyone, including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five (5) years (unless it is reasonably expected to last longer, in which case the longer period shall be used for this estimate) and require a trial on the merits; (3) a detailed explanation of where any money to be paid by the Association will be obtained, including a per Lot breakdown of all costs and fees per year, assuming the litigation will last five (5) years; (4) a written statement by each Management Committee Member indicating that Person's position on the litigation; (5) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and

known factual information; (6) all terms of the agreement between the Association and the attorney or law firm prosecuting the action, including a copy of any engagement letter, contract, or agreement related to that representation; and (7) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action. In addition to the requirements above and before commencing any action, the Association must obtain the approval of eighty-five percent (85%) of all Owners (not eighty-five percent (85%) of those present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days after the meeting required above for notice, and no later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action, or to pay for any costs associated with any such action, including, but not limited to, copying costs, deposition costs, expert witness costs, and filing fees.

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

worth the continuation of the action; (iii) the Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further; and (iv) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.

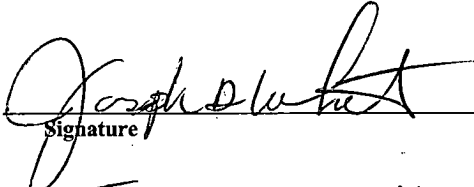
- j. The existence of procedures and/or requirements in this Section applicable to claims against the Declarant or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims, or as contradictory to a prohibition or limit on such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

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23.6 Land Owners. All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto, subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 23.

Dated this 18th day of December, 2018.

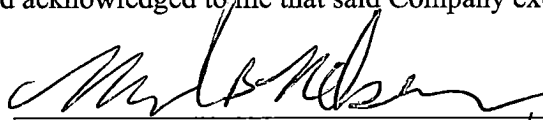
Ironwood Real Estate, LLC, (Declarant)

By: 
Signature
Joseph D. White
Printed

Its: Manager

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

On this 18, day of December, 2018, personally appeared before me (Name of Document Signer) Joseph D white, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the (Title or Office) Manager, of Ironwood Real Estate, LLC (the "Company") and that said document was signed by him/her on behalf of said Corporation with all necessary authority, and acknowledged to me that said Company executed the same.


Notary Public Mark B Nelsen

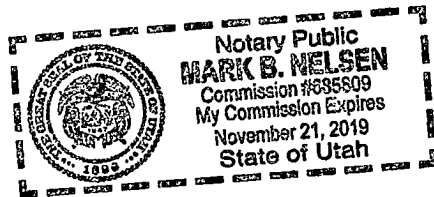


EXHIBIT A

LEGAL DESCRIPTION

A parcel of land, situate in the South Half of Section 20, Township 2 South, Range 4 West, Salt Lake Base and Meridian, and in Stansbury Park, Tooele County, Utah, more particularly described as follows:

Beginning at a point on the Quarter Section line, which is located North 89°23'02" East 541.70 feet along the Quarter Section line from the found 3" brass Tooele County Surveyor monument, dated 1983, at the West Quarter Corner of Section 20, Township 2 South, Range 4 West, Salt Lake Base and Meridian, and running:

thence North 89°23'02" East 2,556.67 feet along said Quarter Section line;
thence South 0°36'58" East 650.00 feet;
thence South 89°23'02" West 2,556.67 feet;
thence North 0°36'58" West 650.00 feet; to the Point of Beginning.

Contains 1,661,836 square feet or 38.15 acres,

Known as: The Pier at Stansbury Park, Phase 1, P.U.D.

Parcel No's: 20-041-0-0101 - 020-041-0-0119

And 20-041-0-000A - 20-041-0-000F.

EXHIBIT B

BYLAWS

BYLAWS

For



BYLAWS
OF
THE PIER AT STANSBURY
PARK

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**BYLAWS
OF
THE PIER AT STANSBURY PARK**

These Bylaws of the Pier at Stansbury Park HOA (these "Bylaws") are hereby adopted and established as the Bylaws of The Pier at Stansbury Park HOA. ("the Association"). These Bylaws and any amendments thereto apply to the Association and bind all present and future Owners and Occupants.

**ARTICLE I:
DEFINITIONS**

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, and Restrictions for the Pier at Stansbury Park (the "Declaration"), as may be amended, have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws will be accomplished as provided for in the Declaration.

**ARTICLE II:
OWNERS**

- 2.1 **Annual Meetings.**
 - (a) **Requirement.** The Association shall hold an annual meeting of the Owners no less than once each calendar year.
 - (b) **Date and Time.** Unless changed by the Management Committee, the annual meeting of Owners will be held in November of each year, the specific date and time of which will be set by the Management Committee. The Management Committee may from time to time change the date and time for the annual meeting of the Owners.
 - (c) **Purpose.** The annual meeting will be held for any, or all, of the following purposes:
 - (1) Electing Management Committee Members;
 - (2) Discussing the most recent financial report(s), budget statement, and reserve study; and discussing reserves;
 - (3) Review and discussion of the Rules;
 - (4) Discussing insurance issues and coverage; and
 - (5) Transacting such other business as may properly come before the meeting, which is limited to those matters for which Owners have the authority to

vote on and decide as provided for in the Governing Documents and by law.

- (d) Election of Management Committee Members. If Management Committee Member elections cannot be held on the day designated for the Owners' annual meeting, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.
- (e) Minutes of Meetings. The minutes of each annual meeting, not previously approved by the Management Committee, must be approved by a majority of the Management Committee Members in attendance at the following annual meeting.

2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by a majority vote of the Management Committee or by the President. Special meetings must be called upon the written request of Owners holding not less than fifty percent (50%) of the Allocated Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners must include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of the purpose of the meeting must be on every document containing signatures. A written request must be provided to the Manager or the President. Upon receipt of a request complying with the requirements of the Bylaws and the Act, the Association shall call a special meeting, provide notice of the special meeting, and conduct a special meeting. The meeting must be held within sixty (60) days of receipt of the request. The sole purpose of the meeting shall be to address any proper purposes identified on the request and no other issues shall be addressed or voted on unless otherwise required or allowed by these Bylaws.
- (c) Cancellation. A request for a special meeting of the Owners called by Owners may be cancelled by a written request for cancellation delivered to any board member in the Association any day before the meeting date or to any person presiding over the meeting on the date set for the meeting and before the time set to start the meeting. A request to cancel a meeting must be signed by Owners who signed the original request for special meeting and by enough of those Owners such that the remaining Allocated Interests of Owners who signed the request and who have not signed the cancellation is less than 40% of the Allocated Interests of all Owners.

2.3 **Place of Meetings.** Meetings of the Owners, if held in person, must be held within ten (10) miles of the Project.

2.4 **Notice of Meetings.** The Management Committee shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting.

- 2.5 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Management Committee may designate a record date, which must not be more than sixty (60) days nor less than ten (10) days, prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a proper notice of the meeting is sent will be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Persons or entities appearing in the Association's records on such record date as the Owners of record of Lots on the Property will be deemed to be the Owners of record entitled to notice of and to vote at the Owners' meeting.
- 2.6 **Quorum.** At any Owners' meeting, the presence (in person or by some other means allowing for participation) of forty percent (40%) of the Allocated Interest of the Owners at any duly called meeting of the Association will constitute a quorum. The vote of the Owners representing a majority of the Allocated Interest of the Owners in attendance (in person or by some other means allowing for participation), will decide any question brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration, or these Bylaws require a fixed percentage of Owners or Allocated Interest to approve any specific action (i.e., amending Governing Documents or changing voting rights), that percentage will be required to approve such action.
- 2.7 **Proxies.** At each Owners' meeting, each Owner entitled to vote is entitled to vote in person or by proxy; provided, however, that the right to vote by proxy exists only where the instrument authorizing such proxy to act has been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owners' attorney when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument must be delivered either prior to or at the meeting (but no later than any point after the start of the meeting that is announced as the final time to deliver proxies) to the Association's Secretary/Treasurer or to such other officer or Person who the Association has authorized to accept proxies at the meeting.
- 2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting has the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Allocated Interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present is necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) or more conflicting votes by co-Owners of one Lot, no vote will be counted for that Lot but it will be counted for the purposes of establishing a quorum. In no event will fractional votes be exercised in respect to any Lot.
- 2.9 **Ballots and Written Consent.** The Association may, consistent with the requirements of the Utah Revised Nonprofit Corporation Act, utilize (1) written consents to take action

without a meeting; or (2) mailed ballots. Any Owner may deliver written consent by electronic transmission. A written consent delivered by electronic transmission is considered to be written, signed and dated for purposes of action without a meeting if the written consent is delivered with information from which the Association can determine that the written consent was sent by the Management Committee Member and the date on which the written consent was transmitted.

- 2.10 **Minutes of Meetings.** The Secretary/Treasurer shall take minutes of all Owners' meetings. The minutes must include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy; (2) the date of the meeting; (3) the identification of any issue that is voted on or decided in the meeting; (4) the number of votes cast for and against any issue decided upon; and (5) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting.
- 2.11 **Meetings by Telecommunication.** Owners may participate in any annual, regular, or special meeting of the Owners or the Management Committee by, or the meeting may be conducted through the use of, any means of communication by which all Persons participating in the meeting may hear each other during the meeting. An Owner or Management Committee Member participating in a meeting by a means permitted under this section is considered to be present in person at the meeting. The Management Committee may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.
- 2.12 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other means of voting (including voting for Management Committee Members) and meetings, including those means allowed under Utah's Uniform Electronic Transactions Act, to the extent not prohibited by the Act and the Revised Nonprofit Corporation Act.

ARTICLE III: BOARD OF DIRECTORS

- 3.1 **Number, Tenure, Qualifications, and Election.**
- (a) Number of Members. The Management Committee is composed of three (3) Persons meeting the qualifications stated in the Declaration and these Bylaws. In accordance with Utah Code § 57-8a-502(3)(a), a majority of the Management Committee Members must be Lot Owners.
- (b) Management Committee Member Requirements.
- (1) To be eligible to serve on the Management Committee, a Person must be an Owner or the spouse of an Owner, and over the age of eighteen (18) years. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a Management Committee Member, provided that Person resides on the Lot owned by the entity or trust. Only one person associated with each Lot (whether the Owner, a spouse of an Owner, or an agent of an entity) may be on the

Management Committee at any one time. Any Person shall, upon a request by an Owner, produce sufficient documentation establishing that Person's right to serve on the Management Committee.

- (2) To be eligible to serve on the Management Committee and prior to being included as a candidate in any election, the candidate must indicate in a writing delivered to the Secretary/Treasurer before the meeting in which an election is held, or orally in person at the meeting at which the election is held, that the Person is willing to serve on the Management Committee.
 - (3) Any candidate whose election or appointment would contravene the requirements in these Bylaws is ineligible for election or appointment.
- (c) Term. The term of each Management Committee Member will be three (3) years. The terms of the Management Committee Members will overlap so that one (1) Management Committee Member will be elected one year, one (1) the next year, and one (1) the following year, and so on.
- (d) Election. At each of the Association's Annual Meetings, an election must be held to fill any vacancies on the Management Committee. Management Committee Members will be elected by obtaining the most votes of Owners present at the annual meeting. If two (2) or more candidates have equal votes, then the issue will be resolved by one or more coin tosses conducted in a manner so that each candidate has an equal risk of winning or losing.

3.2 Meetings.

- (a) Regular Meetings. The Management Committee shall hold regular meetings not less than quarterly, the date and time of which will be determined at the discretion of the Management Committee.
- (b) Who is Entitled to Attend. All regular meetings must be open to all Owners. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.
- (c) Notice to Owners. Any Owner may request notice of Management Committee meetings by requesting such notice from either a Management Committee Member or the Manager and providing a valid email address at which the Management Committee Member will receive notice. Any Owner who has requested notice of Management Committee meetings must be given notice of Management Committee Meetings along with the Management Committee Members.
- (d) Owner Comments at Management Committee Meetings. At each special or regular meeting of the Management Committee, the Management Committee shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Management Committee may select a specific time period during the meeting and limit Owner comments to such a time period. The Management Committee may set a reasonable length of time that each Owner may speak.

- (e) Attendance by Telephone or Other Electronic Means. The Management Committee may allow attendance and participation at any meeting of the Management Committee by telephone or any other electronic means that allows for the Management Committee Members to communicate with one another orally in real time, including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Management Committee allows any Management Committee Member to participate by electronic communication, the Management Committee must provide information necessary to allow any Owner who has requested notice of Management Committee meetings the ability to participate by electronic communication. A Person participating by these means is considered to be present in person at the meeting.
- (f) Special Meetings. Special meetings of the Management Committee may be called by the Secretary/Treasurer at the written request of any two (2) Management Committee Members, or by the Association President. Notice of any special meeting must be given at least forty-eight (48) hours prior thereto to each Management Committee Member and must state the time, place, and purpose for such meeting. No notice of special meetings is required to be provided to Owners, unless an Owner previously requested to be notified of all Management Committee meetings. Owner may attend any special meeting in the same manner as the Management Committee members may attend.
- (g) Quorum and Manner of Acting. Two (2) Management Committee Members constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee Members will be the act of the Management Committee. The Management Committee Members shall act only as a Management Committee, and individual members have no powers as such.
- (h) Place and Notice of Meetings. The Management Committee may designate any place within five (5) miles of the Project as the place of any in person meeting for any regular meeting called by the Management Committee, but shall in good faith attempt to hold in person meetings at the Project or in as close a proximity to the Project as reasonably possible. All Management Committee Members and Owners must be given at least ten (10) days' notice of regular meetings.
- (i) Executive Session.
- (1) The Management Committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
 - (2) The discussions in executive session must be confidential and must not be disclosed to anyone outside of the meeting except as authorized by the Management Committee.

- (3) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
- (4) The minutes of the meeting at which an executive session is held must include:
 - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “To discuss the terms of a management contract with XYZ Company,” or “To discuss the pending litigation with XYZ.”
 - (ii) Any decisions made during executive session.
- (5) Care must be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of Management Committee Members and any Association manager. Executive Session minutes may be redacted before being disclosed to non-Management Committee Members if they contain attorney-client privileged information or would otherwise disclose litigation strategy or work product, which may include the redaction of descriptions of decisions.
- (6) Executive sessions may be held to discuss and make decisions related to the following matters:
 - (i) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including, but not limited to, meetings with the Association’s counsel;
 - (ii) Contracts and purchases related to the Association, including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
 - (iii) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
 - (iv) Rule violations by Owners, including, but not limited to, the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.

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

- (a) Any action required or permitted by law or the Governing Documents to be taken at a Management Committee meeting may be taken without a meeting if notice is

transmitted in writing by letter or electronic transmission to each Management Committee Member and either:

- (1) Each Management Committee Member consents in writing (i.e. via letter or electronic transmission); or
 - (2) Each Management Committee Member by the time stated in the notice takes one of the following actions:
 - (i) Signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; or
 - (ii) Fails to demand in writing that action be taken at a meeting
 - (3) The affirmative votes in writing for the action received by the Association, and not revoked, equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Management Committee Members were present and voted; and
 - (4) The Association has not received a written demand by a Management Committee Member that the action be taken at a meeting.
- (b) Failure to demand that the action not be taken without a meeting by the time in the notice constitutes waiver of the right to demand a meeting.
- (c) The notice for action without a meeting must state: (1) the action to be taken; (2) the time by which a Management Committee Member must respond to the notice; (3) that failure to respond by the time stated in the notice will have the same effect as: (a) abstaining in writing by the time stated in the notice, and (b) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (4) any other matters the Association determines to include.
- (d) Action without a meeting, without unanimous consent, will be effective at the time stated in the notice, unless the notice specifies a different time for voting and for the action to occur.
- (e) Action by unanimous consent is taken when the last Management Committee Member to consent signs a writing describing the action taken, unless, before that time, any Management Committee Member revokes a previously given consent by sending a writing signed by that trustee to the secretary or Person the Management Committee authorized to receive the revocation. The Management Committee may choose a different effective date and time.
- (f) For purposes of this section:
- (1) "Signed" or "signature" is any indication on the document, whether paper or electronic, that the document is from and consented to by the Person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.

- (2) "Writing" refers to an email, letter, facsimile, or any other physical or other electronic transmission.
 - (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
 - (4) Any response to any electronic communication must be:
 - (i) To the address of the sender using the same address and means of communication as was used to send the request for consent of an action, such as email, facsimile, or hand delivery; or
 - (ii) To any address in regular use, electronic, telephonic, or physical, by the Person sending the request.
- (g) A communication satisfies the requirement to "describe the action taken" if:
- (1) It is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action; or
 - (2) The writing from the Management Committee Member sufficiently describes or restates the proposed action.

3.4 **Compensation.** No Management Committee Member may receive compensation for any services that the Management Committee Member, in the capacity of Management Committee Member, may render to the Association; provided, however, that a Management Committee Member may be reimbursed for expenses incurred in the performance of the Management Committee Member's duties to the extent such expenses are unanimously approved by the Management Committee.

3.5 **Resignation.** A Management Committee Member may resign at any time by delivering a written resignation to either the President or the Management Committee. Unless otherwise specified therein, such resignation will take effect upon delivery. An oral resignation attempt is not effective.

3.6 **Removal of Management Committee Members.** Any Management Committee Member may be removed and replaced, with or without cause, by the affirmative vote of a majority of the Allocated Interest of the Association. This vote must be taken at a special meeting of the Owners, if one is properly called for that purpose. Any Management Committee Member whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting prior to the vote. If the Owners vote to remove all of the Management Committee Members, those present shall immediately thereafter and at the same meeting elect new Management Committee Members using the procedures normally applicable for election of Management Committee Members at an annual meeting. No vote to remove all Management Committee Members shall be effective until the proper election of new Management Committee Members. If the Owners vote to remove less than all of the Management Committee Members of the Management Committee, the Owners may vote to elect replacement Management

Committee Members at the special meeting. If the Owners vote to remove less than all of the Management Committee Members and either due to inadvertence, lack of willing candidates, or for any other reason do not elect replacements at the special meeting, the remaining Management Committee Members, by majority vote, shall appoint replacement Management Committee Members for the remainder of the term of the Management Committee Members who were removed

- 3.7 **Vacancies Other Than by Removal by Owners.** If vacancies occur in the Management Committee by reason of the death, resignation, or disqualification of a Management Committee Member, the Management Committee Members then in office shall continue to act, and such vacancies must be filled by a vote of the Management Committee Members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee Member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee Member is removed. Any Management Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of that Management Committee Member's predecessor.

ARTICLE IV: OFFICERS

- 4.1 **Officers.** The officers of the Association include a President, Vice President, and Secretary/Treasurer.
- 4.2 **Election, Tenure and Qualifications.** The Management Committee shall choose the Association's officers annually at the first meeting of the Management Committee following the annual meeting and thereafter at any time by the Management Committee. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be Management Committee Members of the Management Committee during the entire term of their respective offices.
- 4.3 **Resignation and Removal.** Any officer may resign any officer position at any time by delivering a written resignation to any Management Committee Member. Unless otherwise specified therein, such resignation will take effect upon delivery. At any time, the Management Committee may appoint new or different officers, with or without cause, upon the affirmative vote of the majority of the Management Committee.
- 4.4 **Vacancies and Newly Created Offices.** If any vacancy occurs in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office is created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting of the Management Committee. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.
- 4.5 **The President.** The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President has all authority typically

granted to the Person presiding over a meeting, including, but not limited to: (1) the right to control the order of the meeting; (2) the right to arrange for the removal of any disruptive Persons who may include but not be limited to any Person who (a) refuses to abide by rules or requests of the presiding Person related to the order of the meeting and when speaking is permitted; or (b) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in “Robert’s Rules of Order” or “The Modern Rules of Order”; and (4) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President has the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President has authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect property and to protect against personal injury. The President is responsible for the duties of any other office while that office is vacant.

- 4.6 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President’s resignation, absence, inability, or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.
- 4.7 **The Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such Person to keep. The Secretary/Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Secretary/Treasurer has the authority and obligation to generally implement the requirements of Governing Documents as it relates to the funds of the Association, including any requirement to obtain a review of the Association’s financial records by an independent accountant and the preparation and filing of appropriate tax returns. The Secretary/Treasurer shall also act in the place and stead of the President in the event of the President and Vice President’s resignation, absence, inability, or refusal to act. The Secretary/Treasurer shall perform such other duties as required by the Management Committee.
- 4.8 **Compensation.** No officer will receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

ARTICLE V: COMMITTEES

- 5.1 **Creation and Termination of Committees.** The Management Committee may from time to time create such committees (each a “Committee”), including an Architectural Review Committee (“ARC”) as it deems appropriate in carrying out its duties,

responsibilities, functions, and powers. The membership of each such Committee designated hereunder may include Management Committee Members, other Owners, the spouses of Owners, Occupants, or other people. The Management Committee may terminate any Committee at any time.

- 5.2 **Powers of Committees.** A Committee will not have any powers, duties, or responsibilities beyond an advisory capacity or beyond those specifically assigned by the Management Committee in the minutes or resolution creating a Committee. A Committee may not be delegated any powers, duties, or responsibilities of the Management Committee for final decision, and shall act only as an advisory committee to the Management Committee, unless the Committee is made up only of Management Committee Members. For reasons such as preventing conflicts of interests and properly guiding litigation that involves a Management Committee Member, the Management Committee may create a Committee made up of less than all Management Committee Members that is assigned final decision-making authority on the issues delegated to that Committee.
- 5.3 **Proceedings of Committees.** Each Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Committee may from time to time determine. If required by the Management Committee, each such Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.
- 5.4 **Quorum and Manner of Acting.** Unless otherwise established by the Management Committee, procedural or quorum requirements for voting by the Committee shall be as provided for in the Nonprofit Act. The members of any Committee designated by the Management Committee hereunder shall act only as a Committee, and the individual members thereof have no powers, as such.
- 5.5 **Resignation and Removal.** Any Committee member may resign at any time by delivering a written resignation to any Management Committee Member or any presiding officer of the Committee. Unless otherwise specified therein, such resignation will take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any Committee.
- 5.6 **Vacancies.** If any vacancy occurs in any Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Committee and, provided that two (2) or more members are remaining, may continue to act.

ARTICLE VI: INDEMNIFICATION

- 6.1 **Indemnification.** No Management Committee Member, officer, or member of a Committee is personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Management Committee Member,

officer, or Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each Person who serves at any time as a Management Committee Member, officer of the Association, or a member of a duly formed Committee, as well as such Person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such Persons become subject, by reason of that Person having heretofore or hereafter been a Management Committee Member, officer of the Association, or member of a Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Management Committee Member, officer, or Committee member, and shall advance and reimburse any such Person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association has the right, in its sole discretion, to defend such Person from all suits or claims; provided further, however, that no such Person will be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such Person's intentional misconduct. The rights accruing to any Person under the foregoing provisions of this section do not exclude any other right to which such Person may lawfully be entitled, nor does anything herein contained restrict the right of the Association to indemnify or reimburse such Person in any proper case, even though not specifically provided for herein or otherwise permitted. To the extent allowed by law, the Management Committee may adopt a resolution to indemnify the Association's Manager and to define the limits of such indemnification.

- 6.2 **Other Indemnification.** The indemnification herein provided will not be deemed exclusive of any other right to indemnification to which any Person seeking indemnification may be provided under any statute, agreement, vote of disinterested Management Committee Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided will continue as to any Person who has ceased to be a Management Committee Member, officer, Committee member, or employee, and will inure to the benefit of the heirs, executors, and administrators of any such Person.
- 6.3 **Settlement by Association.** The right of any Person to be indemnified will be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII: AMENDMENTS

- 7.1 **Amendments.** Except as otherwise provided herein or by the Act, these Bylaws may be amended by the affirmative vote of Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a

Lot is sufficient if there are multiple Owners of the Lot and no other Owner of the Lot votes inconsistently.

- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment must be signed by the President or Secretary/Treasurer of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration will be effective when the amendment has been recorded in the Utah County Recorder's office.

ARTICLE VIII: WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes will be deemed waived under the following circumstances:
- (a) If the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
 - (b) If the objecting Person was not in attendance at the meeting but was entitled to and had proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date the meeting is held.
 - (c) If the objecting Person was not in attendance at a meeting, was entitled to and did not have proper notice of the meeting but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue was made within thirty (30) days of the date of the meeting.
 - (d) If the objecting Person was not in attendance at the meeting and was entitled to but did not have actual and proper notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within sixty (60) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
 - (e) For any action, vote, or decision that occurred without a meeting or at a meeting to which the objecting Person was not entitled to notice, they are waived if no objection to the particular procedural issue is made within ninety (90) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 **Requirements for Objections.** All objections except those made at a meeting must be in writing. Whenever made, objections must be specific and include identification of the specific provision of the Governing Document or other law that is alleged to have been violated and a brief statement of the facts supporting the claimed violation.

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

- (a) Any failure to comply with the provisions of the Declaration;
- (b) Any failure to obtain a proper quorum; and
- (c) Any failure to obtain the proper number of votes, consents, or approvals required to take a particular action.