AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

ENT 112979:2015 PG 1 of 80
Jeffery Smith
Utah County Recorder
2015 Dec 17 01:12 PM FEE 202.00 BY SW
RECORDED FOR Select Title Insurance Agency
ELECTRONICALLY RECORDED

FOR

THREE FALLS

IN

ALPINE CITY, UTAH

THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 19 AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND IMPORTANT WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 20.

COURTESY RECORDING
This document is being recorded solely as a courtesy and an accommodation to the parties named herein. Select Title Insurance Agency, Inc., hereby expressly Disclaims any responsibility or liability for the accuracy of the content thereof.

TABLE OF CONTENTS

RECITALS *1*

ARTICLE 1 ..... *2*

DEFINITIONS 2
Act 2
Allocated Interest 2
Articles 2
Assessment 2
Association 3
Building Envelope 3
Bylaws 3
City 3
Common Area and Facilities 3
Common Expenses 3
Declaration 3
Design Guidelines 4
Design Review Committee 4
Development Agreement 4
Developed Open Space 4
Dwelling 4
Gate 4
Guardhouse 4
Governing Documents 4
Lender 4
Lot 4
Manager 4
Management Committee 4
Occupant 4
Owner 4
Person 5
Plat 5
Private Open Space 5
Private Trail System 5
Project 5
Property 5
Public Open Space 5
Public Trail System 5
Rules 5
Subdivision 5
Subdivision Improvements 5
Terms and Conditions 6
Three Falls Entry Feature 6
Water Feature 6

ARTICLE 2 ..... *6*

THE PROJECT 6
Binding Effect of Governing Documents 6
Nature of the Project 6
Project Name 6
Registered Agent 6
Expansion of Project 6

ARTICLE 3 ..... *6*

ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION 6
Organization of Association 7
Modifying or Changing the Name of the Project 7
Legal Organization 7
Membership 7
Availability of Documents 7
Management Committee 7
Management Committee Members 8
Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee 8
No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents 9
Registration with the State 9

ARTICLE 4 ..... *9*

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION 9
Rights and Responsibilities of the Association 9
Maintenance 9
Capital Improvements 9
Paying Expenses 10
Setting and Collecting Assessments 10
Adopting and Enforcing Rules 10
Hiring Managers and Delegating Responsibilities 10
Other Necessary Rights 10
Enforcement Rights 10
Discretion in Enforcement 10
Reserve Fund 11
Preventing Conflicts with Service Providers and Vendors 11
Establishing Hearing Procedures 12
Annual Meeting 12
Payoff Information Fees 12
Reinvestment Fee Covenant upon Sale or Transfer of Lot 12

ARTICLE 5 ..... *13*

BUDGETS & ASSESSMENTS 13
Purpose of Assessments 13

Budget and Regular Assessment 13
Payment of Regular Assessments 14
Adjustments to Regular Assessments 14
Personal Obligation for Assessment 14
Capital Improvements 14
Percentage Assessments 14
Rules Regarding Billing and Collection Procedures 14
Certificate of Payment 15
Special Assessments 15
Special Assessments to Individual Lot 15
Acceptance of Materials or Services 15
Application of Excess Assessments 15
No Offsets 15
How Payments Are Applied 16

ARTICLE 6 ..... *16*

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY 16
Delinquency 16
Collection Charges and Interest 16
Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments 16
Lien 16
Foreclosure Sale 17
Homestead Waiver 17
Termination of Delinquent Owner's Rights 17
Requiring Tenant to Pay Rent to Association 17
Attorney Fees Incurred As a Result of a Default 17
Association Responsibility after Foreclosure 18

ARTICLE 7 ..... *18*

SITE AND DESIGN CONTROLS 18
Design Review Committee 18
Authority 19
Design Review Committee Review Process 19
Pre-Design Meeting 19
Preliminary Design Review 20
Final Plan Review 21
Building Permit 21
General Standards 22
Rules and Regulations 22
Construction Rules 23
No Liability 23
Written Records 24
Inspection and Compliance 24
Variances 24

ARTICLE 8 ..... *25*

RIGHT TO COMMON AREA AND FACILITIES 25
Right and Nonexclusive License to Use Common Area and Facilities 25
Public Utilities 25
Easements for Encroachments 26
Limitation on Easement—Suspension of Owner's Rights 26
Views 26

ARTICLE 9 ..... *26*

USE LIMITATIONS AND CONDITIONS 26
Rules 27
Signs 27
Nuisance 27
Temporary Structures 27
Parking 27
Outside Speakers and Amplifiers 28
Repairs 28
Unsightly Items 28
No Fires or Fireworks 28
Shooting or Hunting 28
ATVs 28
Animals 28
Residential Occupancy 29
No Subdivision or Timeshare of Lot or Dwelling or Recording by Owners of Terms and Conditions 29
Combining of Lots Subject to Approval 29
Underground Utilities 30
Erosion Control 30
Landscaping 30
Lighting 30
Variances 30
Hazardous Substances 31

ARTICLE 10 ..... *31*

INSURANCE 31
Insurance Requirement 31
Annual Insurance Report 32
Comprehensive General Liability (CGL) Insurance 32
Director's and Officer's Insurance 32
Insurance Coverage for Theft and Embezzlement of Association Funds 33
Certificates 33
Named Insured 33
Owner Act Cannot Void Coverage Under Any Policy 33
Waiver of Subrogation against Owners and the Association 33

ARTICLE 11 ..... *33*

EMINENT DOMAIN 33
Taking of Common Area 33
Taking of Entire Project 33
Priority and Power of Attorney 33

ARTICLE 12 ..... *34*

AMENDMENT 34
General Amendment Requirements 34
Scope of Amendments 34
Execution and Effective Date of Amendments 34
Changes to Plat or Boundaries of the Association 34
Amendment to Conform to Law 34

ARTICLE 13 ..... *35*

INTERPRETATION, CONSTRUCTION, AND APPLICATION 35
Conflicting Provisions 35
Interpretation of Declaration and Applicability of the Act 36
Cumulative Remedies 36
Severability 36
Construction 36
Applicable Law 36
Gender and Number 36
Effect of Declaration 36

ARTICLE 14 ..... *37*

NOTICE 37
Notices 37

ARTICLE 15 ..... *39*

ATTORNEY FEES AND COSTS 39
Legal Costs Associated with Disputes with Owners 39

ARTICLE 16 ..... *39*

RESERVES 39
Requirement for Reserves 39

ARTICLE 17 ..... *41*

LEASING AND NON-OWNER OCCUPANCY 41
Declaration and Rules Govern Non-Owner Occupancy 41
Definitions 41

No Restriction on Leasing and Non-Owner Occupancy 41
Permitted Rules 41
Requirements for Leasing and Non-Owner Occupancy 41
Exceptions for Family Members 42

ARTICLE 18 ..... *42*

GENERAL PROVISIONS 42
Enforcement 42
No Liability of Officials 43
Use of Funds Collected by the Association 43
Notification of Sale or Transfer and Reinvestment Fee 43
Owner Liability and Indemnification 43
Consent, Power of Attorney, Waiver 43
Security 44
Reasonable Accommodations 44
No Representations and Warranties 44

ARTICLE 19 ..... *45*

DECLARANT RIGHTS 45
Special Declarant Rights 45
Right to Appoint the Management Committee during Declarant Control Period 45
Declarant Control Period 45
Easement Rights 45
Right to Amend Plat 45
Assessment Rights 45
Right to Amend Declaration, Bylaws, and Rules 46
Expansion of Project / Additional Land 46
Assignment of Special Declarant Rights 46
Exceptions from Use Restrictions 46
No Modification of Declarant Rights 46
Use of Lots and Common Areas and Facilities 47
Declarant Rights Do Not Impose Obligations 47
Declarant Exemption from Statutory Obligations 47

ARTICLE 20 ..... *47*

CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION 47
Statement of Intent 47
Association Warranties 48
Owner Warranties 48
Waiver of Subrogation and Release 48
Declarant Litigation 49
Land Owners 53

BYLAWS *1*

ARTICLE I *1*

DEFINITIONS 1
Definitions 1
Notice 1

ARTICLE II *1*

OWNERS 1
Annual Meetings 1
Special Meetings 2
Place of Meetings 2
Notice of Meetings 2
Owners of Record 2
Quorum 2
Proxies 3
Votes 3
Ballots and Written Consent 3
Minutes of Meetings 3

ARTICLE III *4*

MANAGEMENT COMMITTEE 4
Number, Tenure, Qualifications, and Election 4
Meetings 5
Informal Action and Action by Committee Members without a Meeting 7
Compensation 8
Resignation and Removal 8
Vacancies 8

ARTICLE IV *9*

OFFICERS 9
Officers 9
Election, Tenure and Qualifications 9
Subordinate Officers 9
Resignation and Removal 9
Vacancies and Newly Created Offices 9
The President 9
The Vice President 10
The Secretary 10
The Treasurer 10
Compensation 10

ARTICLE V *10*
SUB-COMMITTEES 10
Designation of Sub-Committees 10
Proceedings of Sub-Committees 11

Quorum and Manner of Acting....11
Resignation and Removal....11
Vacancies....11

ARTICLE VI....*11*

INDEMNIFICATION....11
Indemnification....11
Other Indemnification....12
Settlement by Association....12

ARTICLE VII....*12*

AMENDMENTS....12
Amendments....12
Execution of Amendments....13

ARTICLE VIII....*13*

WAIVER OF IRREGULARITES....13
Waiver of Procedural Irregularities....13
Requirements for Objections....13
Irregularities that Cannot Be Waived....13

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THREE FALLS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THREE FALLS is adopted by Three Falls Development, Inc. (the "Declarant"), and is effective as of the date it is recorded in the Utah County Recorder's Office.

RECITALS

A. WHEREAS, the Declarant is the owner of certain real property (the "Property") located in Alpine City, Utah County, Utah described in Exhibit A hereto and incorporated herein by reference.

B. WHEREAS, an initial Plat related to development of a portion of the Property was recorded in Utah County Recorder's Office as Entry No. 31218 by Suzanne Borcherds (the "Original Developer") for the development of a 41 lot subdivision known as Ilangeni Estates (the "Original Development").

C. WHEREAS, a Declaration of Covenants, Conditions and Restrictions for Ilangeni Estates, Alpine, Utah (the "Original Declaration") was recorded in the Utah County Recorder's Office as Entry No. 13219, Book 2216, beginning at Page 831 for the Original Development to establish, among other things, the Ilangeni Estates Homeowners Association (the "Ilangeni Association").

D. WHEREAS, according to the records of the State of Utah Division of Corporations and Commercial Code (the "Division"), effective September 1, 2003, the Division involuntarily dissolved the Ilangeni Association.

E. WHEREAS, the real property comprising the Original Development[1] and the development rights thereto subsequently were acquired by the Declarant.

F. WHEREAS, pursuant to that certain Subdivision Improvement and Guarantee Agreement between the Declarant and Alpine City, the Declarant recorded the Three Falls Subdivision (Amended and Extended Ilangeni Estates) Plat, as amended, to amend and expand the Original Development to create the Three Falls subdivision (the "Project").

G. WHEREAS, the Original Declaration Article VIII, Section 2 provided that the Original Declaration "may be amended at any time by an instrument signed by not less than two-thirds (2/3) of the Owners and approval of the City Council of Alpine City."

[1]Except for and excluding the real property known as "Lot 7A Block B" and "Lot 14" according to the plat for the Original Development recorded with the Utah County Recorder owned by KM8 Holdings, LLC and The Mary Young Family Trust, respectively.

H. WHEREAS, in accordance with the aforesaid provision in Article VIII, Section 2 of the Original Declaration and consistent with the requirements of Utah Code Annotated. § 57-8a-104, the Declarant, as the holder of more than two-thirds (2/3) of the total voting interests created by the Original Declaration, amended the Original Declaration and recorded that certain Declaration of Covenants Conditions and Restrictions for Three Falls (the "Three Falls Declaration") in the Utah County Recorder's Office as Entry No. 104528:2015 thereby adopting covenants, conditions and restrictions for the Project, including that portion of the Project not included in the Original Development.

I. WHEREAS, Article19, Section 19.7 of the Three Falls Declaration reserved to the Declarant the unilateral right to amend the Three Falls Declaration during the Declarant Control Period (as defined therein).

J. WHEREAS, in accordance with the aforesaid provision of the Three Falls Declaration, the Declarant desires to amend the Three Falls Declaration to further define and clarify the respective rights and obligations of the Declarant, Owners, the homeowners association, and Alpine City with respect to the Project.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the Terms and Conditions set forth below, the Declarant hereby amends the Three Falls Declaration. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Three Falls (along with and subject to any future amendments) replaces and supersedes the Three Falls Declaration in all respects. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Three Falls, together with the Articles, the Plat, the Bylaws, the Design Guidelines, and rules and regulations adopted by the Association shall define and govern the rights of the Declarant, the Owners, and the Association related to the Project.

ARTICLE 1
DEFINITIONS

As used herein, unless the context otherwise requires:

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

1.2 "Allocated Interest" Subject to the provisions in Sections 5.2(d), 9.15, and 19 herein. The voting interests in the Association and liability for the Common Expenses shall be allocated equally among the Lots. Each Lot shall have one vote.

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 THREE FALLS HOMEOWNERS ASSOCIATION, 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.

1.6 "Building Envelope" shall mean the area designated on the Plat within which principal development activity may occur. With respect to all Lots, no development activities or changes in the natural conditions of any land shall occur outside the Building Envelope except as may be specifically permitted under the Design Guidelines or approved by the Design Review Committee and authorized by the City in accordance with City ordinance.

1.7 "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.

1.8 "City" shall mean Alpine City.

1.9 "Common Area and Facilities " shall, unless otherwise more specifically provided in this Declaration, mean the Private Open Space within the Project as reflected on the Plat, including any improvements thereon, including, but not limited to the Private Trail System, reserved for the exclusive use and enjoyment of the Owners and Occupants and their respective family members, tenants, guests, and invitees, the and all other parts of the Project outside of the Lots not dedicated to the City or the public, or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities are owned by the Association.

1.10 "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities which is maintained by the Association; (b) maintenance, management, operation, repair and replacement of the public Open Space and any improvements thereon as may be required by the Development Agreement; (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) extermination, security, gardening 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 defined or precluded by the Governing Documents or any applicable law.

1.11 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Three Falls, including all attached exhibits other than any

Bylaws, which are incorporated by reference, and any and all amendments to this Declaration.

1.12 "Design Guidelines" shall mean those requirements governing the site location and architectural design of Dwellings and other structures and improvements within the Project.

1.13 "Design Review Committee" shall mean the Design Review Committee as set forth herein.

1.14 "Development Agreement" shall mean the Subdivision Improvement and Guarantee Agreement between the Declarant and the City for development of the Project.

1.15 "Developed Open Space"" shall mean the Private Open Space and the Public Open Space shown on the Plat, including all improvements thereon.

1.16 "Dwelling" shall mean the single family residence or guest residence built or to be built on any Lot, including the attached garage.

1.17 "Gate" shall mean the gate constructed as part of the Three Falls Entry Feature.

1.18 "Guardhouse" shall mean the guardhouse constructed as part of the Three Falls Entry Feature.

1.19 "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.

1.20 "Lender" shall mean a holder of a mortgage or deed of trust on a Lot.

1.21 "Lot" shall mean any numbered building lot shown on the Plat.

1.22 "Manager" shall mean any entity or Person engaged by the Management Committee to manage the Project.

1.23 "Management Committee"shall mean the entity with primary authority to manage the affairs of the Association.

1.24 "Occupant" shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling on the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.25 "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 Utah County, Utah; however, Owner shall not include

a trustee for a deed of trust. More than one "Owner" is referred to herein, collectively, as "Owners."

1.26 "Person"" shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.

1.27 "Plat" shall mean the record of survey map or maps of the Three Falls Subdivision recorded in the records of the Recorder Utah County, Utah and all amendments and supplements thereto.

1.28 "Private Open Space" shall mean the area within the Project as reflected on the Plat reserved for the exclusive use and enjoyment of the Owners and Occupants and their respective family members, tenants, guests, and invitees.

1.29 "Private Trail System" shall mean and refer to the established system of private trails through Private Open Space within the Project as reflected on the Plat for the sole use and enjoyment by the Owners.

1.30 "Project" shall mean the Subdivision and all structures and improvements thereon including the Lots, the Common Area and Facilities, Public Open Space and Trail Systems.

1.31 "Property" shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.

1.32 "Public Open Space" shall mean the areas within the Project as reflected on the Plat dedicated or reserved for the use and enjoyment of the general public.

1.33 "Public Trail System" shall mean and refer to the established system of public trails through Public Open Space and the public trail easement through the Private Open Space within the Project, as reflected on the Plat, for use and enjoyment by the general public in accordance with applicable governmental rules, restrictions and ordinance.

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

1.35 "Subdivision" shall mean the Three Falls Subdivision, including all Lots, Common Areas and Facilities, and other property within the Project as shown on the Plat covering the entire Property.

1.36 "Subdivision Improvements" shall mean all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of the City or other governmental agencies to the approval of the Subdivision or any Plat thereof.

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

1.38 "Three Falls Entry Feature" shall mean "the Gate, Guardhouse, Water Feature and parking area and adjacent landscaped area constructed at the entrance to the Project.

1.39 "Water Feature" shall mean the pond and stream constructed as part of the Entry Feature.

ARTICLE 2
THE PROJECT

2.1 Binding Effect of Governing Documents. The Declarant and Association hereby confirm that the Property is part of the Project and declare and agree 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. Notwithstanding anything to the contrary herein, nothing in this Declaration shall be construed to modify, change or repeal any City Ordinance.

2.2 Nature of the Project. The Project is an individual single-family residential subdivision that contains or will contain 57 Lots which have been designed to harmonize with the natural mountain setting and unique environmental features and includes roadways, Entry Feature, parking areas and Private Open Space and Public Open Space. The Project is not a cooperative and is not a condominium. Declarant intends that all Owners, trust deed beneficiaries, mortgagees and any other Persons now or hereafter acquiring any interest in the Project shall hold such interest subject to all the rights, privileges, obligations and restrictions set forth in this Declaration.

2.3 Project Name. The Project is named "Three Falls" and is located entirely in Alpine City in Utah County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.

2.4 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.

2.5 Expansion of Project. The Project may be expanded by the Declarant.

ARTICLE 3
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

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

3.2 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.

3.3 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 attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.

3.4 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 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.

3.5 Availability of Documents. Subject to any legal requirements otherwise, 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, 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.

3.6 Management Committee. The governing body of the Association shall be the Management Committee elected pursuant to the Bylaws, subject to the Declarant Rights as set forth in Article 20 herein. The Management Committee shall consist of five (5) members. Except as otherwise provided in this Declaration, Bylaws, 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. Except as may be specifically provided in this Declaration, Bylaws, 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.

3.7 Management Committee Members.

(a) Qualification.

(1) To be on the Management Committee, a Person must be an Owner or member of the Declarant, and, if a natural individual, over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee.

(2) As further detailed and explained in the Bylaws, and except during the Control Period as set forth in Section 19.2 herein, at least three of the Management Committee members must at all times have as their primary residence a Dwelling in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Management Committee Members.

(b) Reasonable Ongoing Requirements for Management Committee Members. The Bylaws may place reasonable obligations and requirements on existing Management Committee Members to retain their membership on the Management Committee, such as a requirement that a Management Committee Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee Member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee Members. Any Bylaw requirements adopted pursuant to this section shall not apply to any Management Committee Members on the Management Committee during the two-year term of the Management Committee Member being served when they are adopted.

3.8 Limitation on Authority of Owners, Management 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 Management 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 Management 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.

3.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone 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.

3.10 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 4
GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

4.1 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 by law.

4.2 Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area and Facilities, Public Open Space and the Project, in accordance with the general purposes specified in this Declaration. Nothing in the foregoing provisions of this Section 4.2 shall be construed to prevent the Association from taking on snow removal obligations of the City pursuant to a written agreement between the City and the Association.

4.3 Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

(a) 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 the Entry Feature. Landscaping alterations and the addition or removal of signs or small structures is not material unless they cause other material changes such as those listed above.

(b) Any capital improvement which would materially alter the nature of the Project, regardless of its cost and prior to being constructed or accomplished, must be

authorized by written consent of Owners holding at least thirty percent (30%) of the voting interests and must be approved of by the Management Committee and the Design Review Committee.

4.4 Paying Expenses. The Association shall provide for the payment of Association expenses.

4.5 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.

4.6 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.

4.7 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, fines to Owners, and regular 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. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**

4.8 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

4.9 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments, and (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

4.10 Discretion in Enforcement.

(a) 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.

(b) 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: (1) whether to compromise a claim made by or against the Management Committee or the Association; and (2) whether to pursue a claim for an unpaid Assessment.

(c) 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: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(d) Subject to Subsection (e), if the Management Committee decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.

(e) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

4.11 Reserve Fund. The Association may maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 18 of this Declaration.

4.12 Preventing Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any Management Committee Member, (2) any relative of any Management Committee Member, Manager, or of any officer, employee, or owner of the Manager, (3) any business or entity in which any Management Committee Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 1% ownership or beneficial interest, or (4) any business, entity, or Person with any familial or financial relationship with any Management Committee Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the manager and relatives of the manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the Manager. A relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

4.13 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 or in case a hearing process is required by law. 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 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.

4.14 Annual Meeting. The Association shall arrange for and conduct an annual meeting at least once a year 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.

4.15 Payoff Information Fees. The Association is specifically authorized to establish a fee of $25.00 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.

4.16 Reinvestment Fee Covenant upon Sale or Transfer of Lot. The Management Committee shall 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, including any Dwellings constructed thereon, 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 a sale of the Lot or not. The amount shall be set forth by the Management Committee in the Rules consistent with Utah Code Ann. § 57-1-46. The value of the Lot for purposes of this section shall be the higher of: (1) the value of the Lot, including any Dwelling that has been constructed thereon, as determined by the property tax assessor on the date of the transfer of title, (2) the purchase price paid for the Lot, including any Dwelling thereon, related to the transfer, or (3) the value of the Lot and any Dwelling thereon 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 five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of

distribution; or (5) 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 $250 or such other amount as may be established by law. 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.

ARTICLE 5
BUDGETS & ASSESSMENTS

5.1 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.

5.2 Budget and Regular Assessment.

(a) The Management Committee is authorized and required to adopt a budget for the following 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 shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Management Committee deems appropriate.

(c) The Management Committee shall 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.

(d) 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, subject to the Declarant rights in Section 19 herein. Notwithstanding the foregoing, the Declarant and the Association agree that the Declarant shall be responsible for any and all Common Expenses incurred by the Association prior to January 1, 2017. Thereafter, during the period from January 1,

2017 until such time as thirty (30) Lots of the total fifty seven (57) Lots are sold, as evidenced by recorded deed, no Owner shall be assessed for more than 1/30th of Common Expenses and the Declarant shall pay for the remaining portion of the Common Expenses.

5.3 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 annually.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

5.9 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 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.

5.10 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 Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

5.11 Special Assessments to Individual Lot. 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 or Dwelling 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) Attorneys' fees, costs and other expenses relating to any of the above.

5.12 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.

5.13 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.

5.14 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.

5.15 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 6
NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

6.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 6.

6.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of $35. Thereafter, additional late fee charges of $35.00 per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at 2% per month. The Association may also assess to the Owner a collection charge, late fee, and any other reasonable charge charged by a Manager related to collections.

6.3 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 a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this paragraph 6.3 is separate and distinct from any lien rights associated with the Lot.

6.4 Lien. The Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, 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 also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (1) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired and the Owner did not file an appeal, or (2) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Lot except only: (1) a lien or encumbrance recorded before this Declaration is recorded, (2) 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 (3) 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. 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 remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' 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 amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

6.5 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson as trustee, who qualifies under 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 Melyssa D. Davidson, with power of sale, the lot and all improvements to the lot for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

6.6 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

6.7 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote.

6.8 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 Dwelling for which an Assessment is more than sixty (60) days late.

6.9 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 attorneys' fees and costs incurred to: (1) obtain advice about a default, (2) collect unpaid Assessments, (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments, (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding, (5) examine the debtor or others related to collections, (6) 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, (7) 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, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary 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 (8) 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.

6.10 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 7
SITE AND DESIGN CONTROLS

7.1 Design Review Committee. The Design Review Committee shall be composed of at least three (3), but not more than five (5), natural persons appointed by the Management Committee. Persons serving on the Design Review Committee shall serve at the pleasure of the Management Committee. The Management Committee may remove a member of the Design Review Committee and appoint a new Design Review Committee member at any time, provided that at all times there shall be a least three (3) persons serving. Members of the Design Review Committee may or may not be Management Committee Members or members of the Association and may include one or more paid professionals, such as an architect, to perform such services. The Design Review Committee shall enforce the current Design Guidelines as set forth by the Declarant or the Association. The Design Review Committee shall have and shall exercise all the powers, duties and responsibilities set out in this Declaration. The Design Review Committee may hire a secretary or other personnel to perform administrative, clerical and other functions. The operating costs of the Design Review Committee, including the services of its planning consultants, professions and other staff, shall be covered through a fee paid to the Design Review Committee by Owners applying for plan review and approval consistent with § 57-8a-109(2) of the Act. The Design Review Committee shall make available to all

Owners a current fee schedule. The Design Guidelines shall also set forth the fee schedule, and the fee schedule may be modified from time to time in accordance with the provisions herein for the amendment and updating of the Design Guidelines. Fees must be paid in full before any review by the Design Review Committee commences and the unused portion of any fee is refundable.

7.2 Authority. Except as otherwise provided in this Declaration, no improvements of any kind or changes in the natural condition of any property shall be erected, altered or permitted to remain on any Lots or Common Area and Facilities unless complete architectural plans, specifications and site plan showing the location and orientation for such construction, alteration or landscaping are approved by the Design Review Committee prior to the commencement of the work. Work subject to Design Review Committee approval may include, but is not limited to, the construction of Dwellings or other structures, pipelines, fences, grading, planting, ponds, parking areas, walls, garages, roads, driveways, antennae, satellite dishes, flag poles, any renovation, expansion or refinishing of the exterior of an existing Dwelling or structure, and any excavating, clearing, landscaping or other building site alterations. Notwithstanding the foregoing, any work performed by or on behalf of Declarant to any of the property within the Project including, but not limited to, the construction of Subdivision Improvements and infrastructure, or the Developed Open Space shall not require approval of the Design Review Committee.

7.3 Design Review Committee Review Process. The process for reviewing building applications will be defined by the rules adopted by the Association and the Design Review Committee. Building applications for individual Lots submitted by Owners must be in substantial conformance with the provisions of Sections 7.4, 7.5, and 7.6 below.

7.4 Pre-Design Meeting. The Design Review Committee review process shall commence with a pre-design informal work session with the Design Review Committee, its consultants, if any, and the Owner and the Owner's architect or design professional. The purpose of this informal work session is to agree on basic parameters for development of the Lot and building of the Dwelling that fully respond to the desires of the Owner and the land-use philosophy and restrictions of the Project. The primary focus of the work session will be an in-depth analysis of the Owner's site, its physical constraints, and the particular visual and environmental sensitivities that must guide its development. The Design Review Committee will review the Design Guidelines with work session participants, discuss how the Design Guidelines apply to the development at hand, and explain the reasoning that determined the Building Envelope on the Owner's Lot. This pre-design work session may not be scheduled until after the Owner has selected a design team so that all of those who will be involved in the planning of the site may attend. The pre-design work session shall take place before any conceptual plans are drawn for the Owner. It is recommended, however, that the Owner prepare for the pre-design work session by completing a certified site survey, by gathering images that illustrate the style of building contemplated and by making a preliminary list of the improvements and building

elements to be constructed on the site. The outcome of the pre-design work session will be a mutual understanding of the site constraints, the design opportunities unique to the site, the potential visual impacts on neighboring Lots, the possibility of environmental impacts that may require mitigation, and any other site-specific concerns that the Design Review Committee may have. It is expected that this early dialogue will give the Owner constructive input when he or she is most able to use it and, in this way, will avoid the adversarial and potentially expensive effort that often attends conventional design and review procedures. At the discretion of the Design Review Committee, the requirement for this pre-design work session may be waived for applications that concern minor changes to existing Dwellings or other structures or landscape.

7.5 Preliminary Design Review. Formal Design Review Committee review begins with the Owner's submittal of conceptual site, building plans and any required review fees. This preliminary design review is intended to provide more detailed direction and guidance to the Owner and the Owner's design team by the specific identification of any site or development issues and concerns that, in the opinion of the Design Review Committee, must be resolved. Owners who anticipate constructing improvements on lands within the Project shall submit preliminary sketches with a site plan of such improvements to the Design Review Committee for informal and preliminary approval or disapproval. Conceptual drawings typically indicate overall design and site planning directions, but are not intended to fully resolve all technical or design issues. They illustrate (l) the siting of conceptual building program elements; (2) the preliminary resolution of building form and massing; (3) the Owner's general thoughts about architectural character, style and materials; (4) the visual and functional linkages; (5) the view of relationships with neighboring Lots and Developed Open Space; (6) the grading required for driveway access and the positioning of the Dwelling(s); and (7) the general extent of site disturbance. The Design Guidelines shall provide additional specific requirements for the submission of conceptual plans. Persons contemplating the purchase of any Lot may submit preliminary sketches with site plans for purposes of obtaining an informal approval hereunder, however, the Design Review Committee shall not be committed or bound by any such preliminary or informal approval or disapproval. Upon request of an Owner, a preliminary design review meeting of the Design Review Committee may be scheduled with three weeks advance notice. The preliminary design review meeting shall be open to any and all interested Lot Owners. At least fourteen (14) days prior to the meeting, notices of the preliminary design review meeting will be sent to all neighboring Lot Owners and a general notice of the preliminary design review meeting will be posted within the Project inviting any interested Lot Owner in the Project. Although not required, the Owner and his/her design team are strongly encouraged to make an informal presentation at the meeting to outline the development program and design goals. The Design Review Committee will evaluate the conceptual plans for conformity with the Design Guidelines and the concepts discussed during the pre-design work session. Within two weeks following the preliminary design review meeting, the Design Review Committee shall issue a written response to the applicant setting forth the outstanding issues and concerns and

summarizing the Design Review Committee members' comments. If unresolved issues appear to warrant it, the Design Review Committee may recommend an interim meeting with the applicant before his/her plans are finalized and submitted for final plan review.

7.6 Final Plan Review. Final plan review cannot occur prior to the completion of the Preliminary Design Review. Upon request by an Owner, and with at least four (4) weeks advance notice, an on-site visit and a final review meeting of the Design Review Committee will be scheduled. The final plan review by the Design Review Committee shall be an open meeting. At least fourteen (14) days prior to the final plan review meeting, notices of the final plan review meeting will be mailed to all neighboring Lot Owners and a general notice of the final plan review meeting will be posted within the Project inviting any interested Lot Owner within the Project. A complete package of final plans must be submitted by the applicant to the Design Review Committee at least one week prior to the scheduled final plan review meeting. It is strongly recommended that the Owner's design team attend the final plan review to present the plans. The Design Review Committee will review the construction drawings and final site plans for conformity with the Design Guidelines and determine whether all outstanding issues discussed in previous review meetings have been resolved. The Design Review Committee shall adopt additional specific requirements for the submission of final plans. All copies of the complete plans and specifications shall be signed by the Owner or his/her architect. The Design Review Committee shall have the right and authority to request any additional specific information, plans, specifications, or reports it deems necessary to evaluate the development proposal throughout the approval and construction process. The Design Review Committee shall certify to the Owner, in writing, when the submittal is complete. A majority vote of the members of the Design Review Committee shall be required for approval of the final plans. Within fourteen (14) days of the final plan review meeting, the Design Review Committee, in its sole discretion, shall either approve, approve with conditions or disapprove the final plan, in writing. Written notice of approval will be sent to the applicant and to the City planning department. If an application is denied, the applicant may resubmit a revised plan at any time. Subsequent review may be subject to the payment of an additional fee. In the event the Design Review Committee fails to take any action within forty-five (45) days after the submittal of a complete package of final plans has been certified in writing by the Design Review Committee as complete, all of such submitted plans shall be deemed approved. The Design Review Committee shall not unreasonably disapprove plans. The Design Review Committee shall disapprove any development plans submitted to it which do not contain sufficient information for the Design Review Committee to exercise the judgment required of it by this Article. If the plans are approved, written notice of the approval will be sent to the applicant and to the City Building Department. If an application is denied, the applicant may resubmit a revised plan at any time, with review subject to payment of an additional fee.

7.7 Building Permit. An Owner may apply for a building permit from the City at any time after final approval of the Owner's plans has been given by the Design Review

Committee. The Owner's approved plans must be stamped by the Design Review Committee, which stamped plans will be the building department submittal set. If the plans submitted to the City differ in any way from the plans approved by the Design Review Committee, all approvals of the Design Review Committee shall be deemed automatically revoked. An Owner shall not submit to the City any application for a building or site modification permit within the Project before the Design Review Committee has reviewed plans and determined that they comply with the Design Guidelines. The Design Review Committee approval is required prior to application for any building permit or site modification permit. The issuance of a building or site modification permit by the City for any plans not finally approved by the Design Review Committee shall not in any way waive, negate or limit the requirement for final approval of all plans by the Design Review Committee before any development activity can occur on any Lot in the Project.

7.8 General Standards. The Design Review Committee shall evaluate, among other things: (1) the materials to be used on the exterior of Dwelling or structures, (2) exterior colors, (3) harmony of architectural design with other Dwellings within the Project, (4) height and other design features, (5) location with regard to topography and finished grade elevations, and (6) harmony of landscaping with the natural setting and native vegetation, (7) impact of lighting on night skies and neighboring Lots (exterior and interior), and (8) consistency with the Design Guidelines.

7.9 Rules and Regulations. The Design Review Committee may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these design covenants by the affirmative vote of a majority of the Design Review Committee and notice as may be required under the Utah Community Association Act. Rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications which must be submitted with any application, site specific limitations or restrictions for each Lot, and may also include guidelines governing the development of each Lot. Such rules and regulations need not be uniform for each Lot and shall take into account the unique character of each Lot. For example, the Design Review Committee rules and regulations may address, and the Design Review Committee shall have the power and authority to regulate, any or all of the following: application procedures and processing fees; charges by any outside professionals or other costs incident to evaluating any application, security deposits or other financial arrangements which are required of an Owner who is developing a Lot to guarantee the repair of any damage to roads or other Subdivision infrastructure and for re-vegetation and restoration of lands; colors and materials, including but not limited to, roofs, chimneys, siding, masonry and glazing; setbacks, height limitations, building profiles and driveway locations; construction staging, construction hours which may be controlled during certain times of the year, storage for construction materials, location of temporary construction facilities such as trailers, dumpsters and toilets; routing of utility extensions; drainage, grading and erosion control; landscape and vegetation, fencing, lighting, signage, and trails; concerns or objectives regarding privacy and visual characteristics and preservation of wildlife.

7.10 Construction Rules. Other than construction performed by the Declarant, with regard to any construction project affecting the exterior of any Dwelling and any construction of Dwellings, the Design Review Committee may impose reasonable rules and regulations to minimize the inconvenience to adjoining Owners during the period of construction. The Design Review Committee may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction. Concurrent with Final Plan Submittal, the Owner shall deposit with the Design Review Committee a performance deposit to be determined by the Design Guidelines. Additionally, Owner shall execute and deliver to the Design Review Committee, as appropriate, a deposit agreement in the form specified in the Design Guidelines. The performance deposit shall to be held in escrow pending the completion (including clean up) of all improvement described in the final, approved plans and constructed on the Owner's individual Lot. In the event that the Owner, the contractor or their respective agents, representatives or employees (1) cause any damage, (2) fail to construct the Dwelling or improvements in accordance with the approved plans, or (3) fail to comply with the Design Guidelines, the Declaration or any rules or regulations adopted or promulgated by either the Design Review Committee, the Design Review Committee or the Declarant may use the performance deposit to, among other things, repair and/or rectify the damage or enforce the Design Guidelines, the Declaration and any other rule or regulation thus violated and cure any defect or problem caused by the non-compliance. In the event of the Design Review Committee's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Declarant or the Association, as the case may be, an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Design Review Committee's delivery of written demand shall be deemed a material breach of the Design Guidelines and this Declaration and shall entitle the Design Review Committee to deny the Owner's contractor's access to the Subdivision (including any of contractor's suppliers, subcontractors, employees and material men) and lien the Lot in an amount equal to the performance deposit deficiency. Upon tendering the performance deposit, the Owner shall execute and deliver to the Design Review Committee a Notice of Voluntary Lien in a form pursuant to the Design Guidelines' requirements.

7.11 No Liability. Neither the Design Review Committee, the Management Committee, the Association or any of its Members, nor the Declarant shall be liable for damages to any person submitting any plans for approval, or to any Owner of lands within the Project by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. The Design Review Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The decision of the Design Review Committee shall be governed by these covenants and any rules or regulations duly adopted by the Design Review Committee pursuant to these covenants.

7.12 Written Records. The Design Review Committee shall maintain and safeguard complete and permanent written records of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval, and all other formal actions taken by it under the provisions of Article 7. The records of the Design Review Committee shall be maintained by the Association.

7.13 Inspection and Compliance. The Design Review Committee shall have no duty or obligation to make inspections of any construction. Nothing herein, however, shall prevent the Design Review Committee from making inspections prior to, during, or after construction. Upon the completion of any work for which approved plans and specifications are required, the Owner shall give written notice of completion to the Design Review Committee. Within thirty (30) days after receipt of such notice, the Design Review Committee may inspect the work to determine its compliance with the approved plans. If the Design Review Committee finds that the work was not done in substantial compliance with the approved plans or any construction or change in natural conditions on any Lot was undertaken without first obtaining approval from the Design Review Committee, written notice shall be sent by the Design Review Committee to such Owner specifying the non-compliance and requiring the Owner to cure such non-compliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the non-compliance or to enter into an agreement to cure on a basis satisfactory to the Design Review Committee within the time provided, the Management Committee may, at its option, cause the non-complying improvement to be removed or the non-compliance to be cured. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the Design Review Committee and/or the Management Committee in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorneys' fees and costs (the "Compliance Assessment"). The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Lot for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien. Such lien shall be (1) evidenced by a statement executed by the Association and notice of the lien recorded with the Utah County Recorder, (2) subordinate only to the first Mortgage, and (3) subject to foreclosure in the manner provided by law. Notwithstanding any other provisions hereof, the Design Review Committee shall not be responsible for: (1) determining that any construction or construction documents conform to applicable building codes, zoning or other land-use regulations, (2) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other person, (3) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist, or (4) any failure to carry out any construction in accordance with plans or specifications.

7.14 Variances. The Design Review Committee may authorize variances from non-

compliance with any of the Design Guidelines or the design provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, esthetic or environmental considerations may require, and subject to City approval. Such variances must be in writing, signed by a majority of the Design Review Committee. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot. The Design Review Committee is the final decision-maker on all Design Review Committee and Design Guideline matters.

ARTICLE 8
RIGHT TO USE COMMON AREA AND FACILITIES

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

(a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities, subject to any other restrictions related to such use. Such right and nonexclusive license 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 and Facilities 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 over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and Facilities and/or Public Open Space, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and Public Open Space 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 and Facilities and Public Open Space for purposes necessary for the proper operation of the Project.

8.2 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 established and dedicated by the Declarant; provided, however, use of said easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and Facilities 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 and Facilities 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 agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. 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.

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

8.4 Limitation on Easement—Suspension of Owner's Rights. An Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

(a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and Facilities; and
(b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or Developed Open Space contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

8.5 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 9
USE LIMITATIONS AND CONDITIONS

9.1 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 57-8a-218(14), the requirements of 57-8a-218, Subsections (1) through (12), except Subsection (1)(b)(ii), are hereby modified to not apply to the Association.

9.2 Signs. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Dwelling with the apparent purpose, in whole or in part, of making it visible to another Lot or any Developed Open Space.

9.3 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 or 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, City, county, state or federal body.

9.4 Temporary Structures. No structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or used therein unless it is approved by the Management Committee.

9.5 Parking. Unless otherwise permitted by the Association in the Rules, and except for "customary parking" and "temporary parking," as permitted by this Section 9.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project. "Customary parking" shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the garage or driveway for each respective Lot so that the vehicles are screened from view from any other Lot. "Temporary parking" shall mean parking on public roadways of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, guests, and invitees, including, without limitation, (1) the right to remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (4) restrictions on the time period and duration of temporary parking, and (5) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict or limit parking on public roadways by Owners and by people associated with the use of Lots. Notwithstanding anything to the contrary herein, nothing in this Section 9.5 shall

be construed to grant the Association any general policy powers over the public or the portions of the Project dedicated to the City.

9.6 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 Dwelling shall be permitted.

9.7 Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except as may be permitted by the Management Committee in the Rules.

9.8 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 and machinery and equipment not a part of the Lots, shall be prohibited on Lot unless obscured from view of neighboring Lots and Developed Open Space. Trash and garbage shall be properly and promptly disposed.

9.9 No Fires or Fireworks. No campfires are permitted anywhere on the Property, other than in residential fire pits or fire pits constructed by the Declarant or the Association within the Private Open Space. All fireworks are prohibited.

9.10 Shooting or Hunting. Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, also is strictly prohibited.

9.11 ATVs. Off-road and all-terrain vehicles (collectively, "ATVs") are not allowed anywhere in the Developed Open Space or on public roads within the Project. Notwithstanding the foregoing provision in this Section 9.11, the Association may use motorized vehicles for Association matters, such as maintenance of all open space areas.

9.12 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 animals of any type 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: (1) is raised, bred, kept, or maintained for any commercial purposes, (2) causes a nuisance, or (3) 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 in 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. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal, and shall indemnify and hold harmless the Association and any

other Owner from any loss, claim or liability of any kind arising from, or related to, such pet or animal. Incessantly barking dogs will not be permitted and will result in fines.

9.13 Residential Occupancy.

(a) No trade or business may be conducted in or from any Dwelling unless:
(1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling, Lot or Open Space;
(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 individuals coming onto the Project who do not reside in the Project or solicitation of Occupants or Owners of the Project;
(4) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
(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 Dwelling or Lot for such activity, and a description of any impact on 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 Dwelling in which the business activity is proposed for the entire time any business activity is conducted; and
(8) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

(b) Except as provided in Section 9.11(a) above, no Dwelling may be used for any purpose other than a residential purpose.

9.14 No Subdivision or Timeshare of Lot or Dwelling or Recording by Owners of Terms and Conditions. No Lot or Dwelling shall be split, subdivided, separated or timeshared into two or more Lots or Dwellings or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease part thereof. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot, Dwelling 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 9.12 shall be null, void, and of no legal effect.

9.15 Combining of Lots Subject to Approval. Subject to approval of the Design Review Committee, the Management Committee and the City, an Owner of two adjacent Lots may combine the two Lots into a single Lot. Combining of Lots may be treated as an adjustment to the Lot lines rather than an amendment of the Plat and shall not require the approval by sixty-seven percent of (67%) the Allocated Interests , provided, however, the

Allocated Interest of the combined Lot shall remain that of two separate Lots for Assessments, voting, and all other purposes.

9.16 Underground Utilities. All wired or piped utilities in the Subdivision are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be re-vegetated to Design Review Committee standards by and at the expense of the Owner no later than the next growing season.

9.17 Erosion Control. Each Owner shall be responsible to insure that no erosion or water drainage shall take place from his/her Lot which may adversely affect neighboring Lots, Developed Open Space and/or roadways.

9.18 Landscaping. Landscaping and irrigation may only be installed within the Building Envelope and adjacent to the driveway. A complete landscaping and irrigation plan (showing landscaping layout and proposed plantings) shall be submitted to the Design Review Committee with each submittal for approval. All areas of the Lot damaged by construction must be re-vegetated under an approved plan. Landscaping plans shall be submitted with the site plan for improvements on each Lot. Retention or incorporation of natural vegetation is encouraged.

9.19 Lighting. All outdoor lighting shall be subject to approval by the Design Review Committee and no outdoor lighting shall be permitted except for low-wattage lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. Basketball and tennis court or other-type of outdoor sport court may be permitted to be lighted and pools may be permitted to have below-water surface lighting, however, the Association may adopt Rules to protect night skies and minimize the impact of outdoor lighting and to regulate the times when outdoor lighting must be turned off .

9.20 Variances. The Management Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 9 if the Management Committee determines in its discretion (by unanimous vote): (1) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (2) 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.

9.21 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 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 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 9.21 shall survive any subsequent sale by an indemnifying Owner.

(c) As used in this Section 9.21, "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. "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

ARTICLE 10
INSURANCE

10.1 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.

10.2 Annual Insurance Report. Not later than sixty (60) days prior to the annual meeting of the Association, 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: (1) 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; (2) 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; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage. 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.

10.3 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, use, repair, replacement, and maintenance of the Public Open Space pursuant to the Development Agreement, and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars ($2,000,000) covering all claims for death of or injury to any one individual 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.

10.4 Director's and Officer's 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: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) 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 (4) 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.

10.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Management Committee members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

ARTICLE 11
EMINENT DOMAIN

11.1 Taking of Common Area. If the portion of the Common Area and Facilities is taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Lot, 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.

11.2 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.

11.3 Priority and Power of Attorney. Nothing contained in this Article 12 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.

ARTICLE 12
AMENDMENT

12.1 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.

12.2 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.

12.3 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 Utah County, Utah.

12.4 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 sixty percent (60%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities or Public Open Space, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot, that Lot Owner must consent. If the approval required herein is obtained, each and every other Owner: (1) 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 (2) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

12.5 Amendment to Conform to Law. The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration 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 to the Owners: (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 (a) notifies the Owner that it intends to amend the Declaration pursuant to this section, (b) provides the Owner a right to object to the amendment within thirty (30) days, and (c) 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 the information to the Owners required by this section, no more than thirty percent (30%) of the Owners have objected to the amendment.

(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 Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Utah County.

ARTICLE 13
INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

13.1 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.

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

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

13.5 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.

13.6 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 Association, any Owner, or any other Person subject to their terms.

13.7 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 recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

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

13.8 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 14
NOTICE

14. 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 the first-class United States 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 seventy-two (72) hours after such deposit,

(iii) by written email correspondence to an Owner: (1) that is sent to an email address provided by the Owner for the purpose of Association communications, or (2) 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 seventy-two (72) hours after it is sent,

(iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent, or

(v) 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 of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot, whether electronic or not. In case any two co-Owners send

conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot address.

(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 the primary Dwelling and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.

(b) Notice to a Lender. Notice to a Lender shall be delivered by first-class United States 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 seventy-two (72) hours after such deposit.

(c) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

(1) by a written notice delivered personally to the managing agent, which shall be effective upon delivery;

(2) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(3) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed 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 seventy-two (72) hours after it is sent; or

(4) by facsimile (whether to a machine or by other means) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 15
ATTORNEY FEES AND COSTS

15.1 Legal Costs Associated with Disputes with Owners.

(a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association 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.

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

(c) 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: (1) the association could not establish an initial position on without having incurred the fees and costs, or (2) results in a substantial modification to a prior position taken by the Association; then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

ARTICLE 16
RESERVES

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

(a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.

(b) Amount. In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Management Committee determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

(c) Owner Veto. Within 45 days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

(d) 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.

(e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts.

(f) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

(g) 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.

(h) Summary and Copies of Reserve Analysis. The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

ARTICLE 17
LEASING AND NON-OWNER OCCUPANCY

17.1 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 section, the Rules, and procedures adopted as allowed in this section.

17.2 Definitions. For the purpose of this section:

(a) "Non-Owner Occupied Dwelling" means:
(1) For a Lot owned in whole or in part by a natural individual or individuals, the Dwelling is occupied by someone when no individual Owner occupies the Dwelling as the individual Owner's primary residence; or
(2) For a Dwelling owned entirely by one or more entities or trusts, the Dwelling 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 Dwelling 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.

17.3 No Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 17.4 and 17.5, any Dwelling may be leased or Non-Owner Occupied.

17.4 Permitted Rules. The Management Committee may adopt Rules requiring:

(a) reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article 17, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.

(b) other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

17.5 Requirements for Leasing and Non-Owner Occupancy. The Owners of all Dwellings 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 Dwelling for transient, short-term (less than twelve months), hotel, resort, vacation, or seasonal use (whether for pay or not);

(d) Except as a guest of an Owner, Daily and weekly occupancy by a Non-Owner Occupants is prohibited (whether for pay or not); and

(e) The Owner(s) of a Dwelling shall be responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance 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.

17.6 Exceptions for Family Members. If only Family Members occupy a Dwelling, then notwithstanding anything to the contrary herein,

(a) Subsections 17.5(a), 17.5(c), and 17.5(d) of Section 1.5 shall not apply to that occupancy;

(b) no written agreement regarding occupancy needs to be created between the Family Member 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 18
GENERAL PROVISIONS

18.1 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.

18.2 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.

18.3 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 Facilities and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

18.4 Notification of Sale or Transfer and Reinvestment Fee. Except as otherwise limited by law, the Management Committee shall establish a reinvestment fee Assessment which shall be no more than one-half of one percent (0.5%) of the value of the Lot and which shall be due and payable immediately after any sale or other transfer of any Lot. The Management Committee shall have authority to set forth in the Rules the date, time for payment, amount, and the requirements for any information that is required from any transferee of any Lot upon any sale or transfer, and any other procedures or requirements related to the reinvestment fee Assessment. The reinvestment fee Assessment shall be due after the transfer.

18.5 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, 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, 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.

18.6 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.

18.7 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 and Facilities 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.

18.8 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 and Facilities, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

18.9 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 19
DECLARANT RIGHTS

19.1 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 19. 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 19.

19.2 Right to Appoint the Management Committee during Declarant 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 Management 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 (with a minimum of three (3) members) until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.

19.3 Declarant 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 "Declarant Control Period." The Declarant shall determine whether to hire professional management during the Declarant Control Period. The Declarant Control Period shall continue in effect for as long as the Declarant holds title to any land within the Project or until the Declarant elects earlier, in writing, to terminate the Declarant Control Period.

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

19.5 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.

19.6 Assessment Rights. The Declarant shall have the right to set all Assessments, regular and special, during the period of Declarant Control. Except as provided in Section 5.2(d) whereunder the Declarant shall be responsible for all Common Expense incurred by the Association prior to January 1, 2017 and, thereafter, until such time as thirty (30) Lots are

sold, Declarant shall pay that portion of the Common Expense remaining after each Owner has paid his or her proportional share up to 1/30th of the total Common Expenses, 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.

19.7 Right to Amend Declaration, Bylaws, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, 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. Any such amendment to the Bylaws 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.

19.8 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.

19.9 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. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.

19.10 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Lots owned by the Declarant.

19.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and specifically in this Article 19, shall not be substantively or procedurally altered without the written consent of the Declarant until five (5) years have passed after the Declarant 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 19, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 19 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.

19.12 Use of Lots and Common Areas and Facilities. 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 and Facilities 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 Facilities and Public Open Space as the Declarant may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Lot with the permission of the Owner of that Lot, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

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

19.14 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), neither Utah Code Ann. § 57-8-211(2) through (9) nor Article 17 herein shall apply or have any effect during the Declarant Control Period. The Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

ARTICLE 20
CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION

20.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot that Owner is purchasing or any aspect of the Project; all prior to purchasing a Lot. Having had the ability to inspect prior to purchasing a Lot and having paid market price for a Lot in the condition it and other Lots and the Common Areas and Facilities 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 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 Lot for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Lots 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.

20.2 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.

20.3 Owner Warranties. The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Lots 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.

20.4 Waiver of Subrogation and Release. The Association and each Owner waives any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and its principles, officers, managers, shareholders, members, employees, agents, and representatives. To

the full extent permitted by law, the Association and Owners hereby release the Declarant and its principles, officers, managers, shareholders, members, employees, agents and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or any of its principles, officers, managers, shareholders, members, employees, agents and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

20.5 Declarant 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 its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, 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-day 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 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 any of its principles, officers, managers, shareholders, members, employees, agents and representatives 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 or its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.

(f) The Association shall indemnify and defend the Declarant and its principles, officers, managers, shareholders, members, employees, agents and representatives against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Declarant's development and/or construction of the Project and/or any damages arising therefrom. By purchasing a Lot, the Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, 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 (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 both the 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 and Common Areas and Facilities 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 full 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 contractor 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 Board of Directors, 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: (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: "The association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Lot 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.", (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits, (iii) 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 years, (iv) a written statement of each Management Committee member indicating that member's position on the litigation, (v) 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, (vi) 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, (vii) 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 85% of the Allocated Interests (not 85% of those Owners 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 (a) the work that was completed in the last month, (b) the time, in hours and minutes, incurred 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, (c) the costs incurred by the attorneys and any experts in the prior month, (d) a running tally of all costs and time, by attorneys and staff members, since the beginning of the action updated monthly, (e) a list of what is needed to move the action toward resolution, (f) the projected dates for each action that is needed to move the action toward resolution, (g) 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, (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, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) 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, (c) 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, (d) 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 its contractor 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 requirement, 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 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 consistent with the requirements of the engagement letter and this declaration.

20.6 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 20.

Dated this 9 day of Dec., 2015.

THREE FALLS DEVELOPMENT, INC.

By: _____
Signature

Will S. Jones
Printed

Its: President

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

On this 9, day of December, 2015, personally appeared before me Will S. Jones, 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 President, of Three Falls Development and that said document was signed by him/her in behalf of said Corporation with all necessary authority, and acknowledged to me that said Corporation executed the same.

(Name of Document Signer)

(Title or Office)

(Name of Entity)

K Baughman
Notary Public

KATHRYN BAUGHMAN
Notary Public - State of Utah
Commission Number: 666991
My Commission Expires May 29, 2017

EXHIBIT A

LEGAL DESCRIPTION

Beginning at the Southeast Corner of Section 12, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence along the Southerly boundary of ILANGENI ESTATES, recorded May 8, 1985 as Entry No. 13218, and Map Filing No. 3163-32(1-3) in the office of the Utah County Recorder, the following four (4) courses, said Southerly line boundary departs from the section line with the first course: (1) South 89°52'28" West 680.79 feet (2) South 89°57'00" West 832.00 feet (3) South 89°36'23" West 103.65 feet (4) South 89°24'50" West 51.97 feet; thence South 39°47'30" West 230.08 feet; thence South 43°47'28" East 37.76 feet; thence South 46°12'30" West 130.00 feet; thence South 29°08'47" West 238.65 feet to the Northerly line of Fort Canyon Road, as dedicated in Dedication Deed, recorded September 4, 1970 as Entry No. 9280 in Book 1192, Page 112 in the office of the Utah County Recorder; thence along said Northerly line the following three (3) courses: (1) North 18°02'00" West 88.86 feet to a 100 foot radius curve to the left (2) along said curve 183.72 feet, having an included angle of 105°16'00" (3) South 56°42'00" West 28.27 feet to the Easterly line of the BILLETER survey recorded as No. 97-25; thence North 13°41'30" West 388.62 feet along the center of a stream to the aforesaid Southerly line of ILANGENI ESTATES; thence along said Southerly line and along the Westerly boundaries of said subdivision the following eight (8) courses: (1) South 89°48'00" West 3.85 feet (2) North 00°14'14" East 82.51 feet (3) North 05°58'58" East 50.90 feet (4) North 15°30'00" East 330.00 feet (5) North 06°00'00" East 170.00 feet (6) North 00°07'57" West 451.34 feet (7) South 89°48'28" West 399.54 feet (8) North 00°15'51" East 300.24 feet; thence West 54.98 feet to the center quarter section line; thence along said line South 00°09'14" West 41.55 feet to the 40 acre line; thence along said line North 89°46'04" West 2637.99 feet to the Westerly line of aforesaid Section 12; thence along said Westerly line and the periphery of said section the following five (5) courses: (1) North 00°23'10" East 1311.89 feet to a county monument (2) North 00°08'06" West 2661.09 feet to a county monument (3) North 89°14'04" East 2646.43 feet (4) North 89°14'04" East 2646.43 feet to a county monument (5) South 00°15'23" East 1376.89 feet to the 40 acre line of Section 7, Range 2 East; along said line North 89°46'44" East 2660.38 feet to the center quarter section line; thence along said line South 00°27'52" East 3822.54 feet; thence South 89°41'32" West 1.28 feet; thence South 01°04'49" East 118.95 feet to the South Quarter Corner of said Section 7; thence along the Southerly line of said Section 7, South 88°33'17" West 2717.08 feet to the Beginning.

Contain 35,124,628 square feet or 806.350 acres.

EXHIBIT B

BYLAWS
FOR
THREE FALLS HOMEOWNERS ASSOCIATION

Table of Contents

BYLAWS *1*

ARTICLE I *1*

DEFINITIONS 1
Definitions 1
Notice 1

ARTICLE II *1*

OWNERS 1
Annual Meetings 1
Special Meetings 2
Place of Meetings 2
Notice of Meetings 2
Owners of Record 2
Quorum 2
Proxies 3
Votes 3
Ballots and Written Consent 3
Minutes of Meetings 3

ARTICLE III *4*

MANAGEMENT COMMITTEE 4
Number, Tenure, Qualifications, and Election 4
Meetings 5
Informal Action and Action by Committee Members without a Meeting 7
Compensation 8
Resignation and Removal 8
Vacancies 8

ARTICLE IV *9*

OFFICERS 9
Officers 9
Election, Tenure and Qualifications 9
Subordinate Officers 9
Resignation and Removal 9
Vacancies and Newly Created Offices 9
The President 9
The Vice President 10
The Secretary 10

The Treasurer 10
Compensation 10

ARTICLE V *10*
SUB-COMMITTEES 10
Designation of Sub-Committees 10
Proceedings of Sub-Committees 11
Quorum and Manner of Acting 11
Resignation and Removal 11
Vacancies 11

ARTICLE VI *11*

INDEMNIFICATION 11
Indemnification 11
Other Indemnification 12
Settlement by Association 12

ARTICLE VII *12*

AMENDMENTS 12
Amendments 12
Execution of Amendments 13

ARTICLE VIII *13*

WAIVER OF IRREGULARITES 13
Waiver of Procedural Irregularities 13
Requirements for Objections 13
Irregularities that Cannot Be Waived 13

BYLAWS
OF
THREE FALLS

These bylaws are hereby adopted and established as the Bylaws of Three Falls Homeowners Association ("the Association"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or 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 Three Falls ("the Declaration"), as amended, shall have the same defined meanings when used in these Bylaws.

1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

ARTICLE II
OWNERS

2.1 Annual Meetings.

(a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.

(b) Date and Time. Unless changed by the Management Committee, the annual meeting of Owners shall be held in October of each year. 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 shall be held for the following purposes.
(1) electing members of the Management Committee;
(2) distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
(3) if no earthquake insurance has been obtained, voting to confirm this decision; and
(4) transacting such other business as may properly come before the meeting.

(d) Approval of Minutes. The minutes of the annual meeting shall be approved by the Management Committee within 90 days of the annual meeting.

(e) Election of Management Committee Members. If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, 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.

2.2 Special Meetings.

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

(b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Management Committee may designate the office of the Manager or any place within Alpine City, Utah as the place of meeting for any annual or special meeting.

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 thirty (30) 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 shall not be more than thirty (30) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Lots in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 Quorum. At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than thirty percent (30%) of the Allocated Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time the owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all

owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."

2.7 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have 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' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall 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 shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or person who has been authorized by the Association 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 shall have the right to cast, in person or by proxy, one vote for each Lot of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be 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. The election of Management Committee Members shall be by secret ballot. When more than one 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 conflicting votes by co-Owners of one Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Lot.

2.9 Ballots and Written Consent. The Association may utilize written consents and ballots consistent with the requirements of the Revised Nonprofit Corporation Act.

2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall 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, (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be sent to all Owners within thirty (30) days of the annual meeting.

ARTICLE III
MANAGEMENT COMMITTEE

3.1 Number, Tenure, Qualifications, and Election.

(a) Number of Members. The Management Committee shall be composed of five (5) persons meeting the qualifications stated in the Declaration, subject to the Declarant Rights set forth in the Declaration.

(b) Member Requirements. At all times after turnover of the Project from the Declarant, at least three (3) of the Management Committee Members must have as their primary residence a Dwelling in the Project. All candidates for the Management Committee shall indicate either in a written statement provided prior to the meeting or verbally at the meeting whether his or her Dwelling in the Project is that person's primary residence. Any candidate whose election or appointment would contravene this requirement shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss.

(c) Term. Except during the Declarant Control Period, the term of each Management Committee Member shall be two (2) years. The terms of the Management Committee Members shall overlap so that three (3) Management Committee Members shall be elected one year, two (2) the next, three (3) the following, and so on.

(d) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee Members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.

(e) Disqualification. If any Management Committee Member is alleged to not meet the qualification requirements in the Declaration and any Management Committee Member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee Member is qualified or not, and during this period shall not make any further decisions. If the Management Committee Member is not qualified, the Management Committee Member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee Member was not qualified. If a Management Committee Member becomes

unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section or until the Management Committee Member is disqualified if no such notice is provided.

(f) Removal for Failure to Participate. If any Management Committee Member shall fail to appear at four (4) successive regular Management Committee meetings in a row or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Management Committee Members may by unanimous vote remove that member and appoint a new member.

3.2 Meetings.

(a) Regular Meetings. The Management Committee shall hold regular meetings at least quarterly, and more often at its discretion.

(b) Who is Entitled to Attend. Consistent with Utah Code Ann. § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.

(c) Special Meetings. Special meetings of the Management Committee may be called by or at the request of any two Management Committee Members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Management Committee Member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.

(d) Quorum and Manner of Acting. Two Management Committee Members shall 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 shall be the act of the Management Committee. The Management Committee Members shall act only as a Management Committee, and individual Members shall have no powers as such.

(e) Place and Notice of Meetings. The Management Committee may designate any place in the City, Utah as the place of meeting for any regular meeting called by the Management Committee but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Management Committee Members and Owners shall be given at least ten (10) days' notice of regular meetings.

(f) Executive Session.

(1) The Management Committee or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Management Committee who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Management Committee.

(2) The minutes of the meeting at which an executive session is held shall 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," "To discuss the pending litigation with XYZ" or "to discuss a complaint of a Rule violation."
(ii) Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney client privileged information shall be recorded in the minutes of the meeting as "Decision made regarding attorney client privileged issue that are recorded in Separate and attorney client privileged minutes of the Executive Session" and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney client privileged information and shall be disclosed to non-committee members only as required by law for the disclosure of attorney client privileged information.

(3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee or the Sub-Committee. 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) 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.

(5) The Management Committee or the Sub Committee holding the executive session shall determine who outside of that committee shall allowed to be present in executive session, and no one else is entitled to be present. All members of the Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

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

(a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each and every Management Committee Member, in writing, either:
(1) votes for the action; or
(2) votes against or abstains from voting, and waives in writing the right to demand that action not be taken without a meeting.

(b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
(1) describing the action taken;
(2) signed by each Management Committee Member; and
(3) not revoked pursuant to subsection 3.3(d).

(c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the management committee members then in office were present and voted.

(d) A Management Committee Member may revoke consent to any action given pursuant to this section by communicating that the member has changed his or her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.

(e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.

(f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee and may be described as an action taken at a meeting of the Management Committee Members in any document.

(g) 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" shall refer to an email, letter, facsimile, or any other physical or electronic document.

(3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.

(4) Any response to any electronic communication shall 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.

(5) A communication shall satisfy the requirement to "describe the action taken" if:
   (i) 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;
   (ii) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
   (iii) the writing from the Management Committee Member sufficiently describes or restates the proposed action.

3.4 Compensation. No Management Committee Member shall receive compensation for any services that he/she may render to the Association as a Management Committee Member; provided, however, that a Management Committee Member may be reimbursed for expenses incurred in the performance of his/her duties as a to the extent such expenses are unanimously approved by the Management Committee.

3.5 Resignation and Removal. 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 shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.

3.6 Vacancies. If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee Member, the Management Committee Members then in office shall continue to act, and such vacancies shall 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 his/her predecessor.

ARTICLE IV
OFFICERS

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer.

4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting. 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. No person shall hold more than one office except that during the Declarant Control Period, the Vice President may also serve as Treasurer or Secretary. All officers must be members of the Management Committee during the entire term of their respective offices.

4.3 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers need not be members of the Association.

4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.

4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. 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.

4.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have 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 (i) refuses

to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) 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 shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.

4.7 The Vice President. The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.

4.8 The Secretary. The Secretary 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 shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.

4.9 The Treasurer. The 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 Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.

4.10 Compensation. No officer shall 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
SUB-COMMITTEES

5.1 Designation of Sub-Committees. The Management Committee may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The

membership of each such Sub-Committee designated hereunder shall include at least one (1) Management Committee Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.

5.2 Proceedings of Sub-Committees. Each Sub-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 Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.

5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Management Committee hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Management Committee.

5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.

5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

ARTICLE VI
INDEMNIFICATION

6.1 Indemnification. No Management Committee Member, officer, or member of a Sub-Committee shall be 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 Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's

heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee Member, officer of the Association, or member of a Sub-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 Sub-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 shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall 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 shall not exclude any other right to which such person may lawfully be entitled, nor shall 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.

6.2 Other Indemnification. The indemnification herein provided shall 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 shall continue as to any person who has ceased to be a Management Committee Member, officer, Sub-Committee member, or employee, and shall 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 shall 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 permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Lots holding at least sixty percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period as set forth in Section 19.7 of the Declaration.

7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

ARTICLE VIII
WAIVER OF IRREGULARITES

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 shall 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 has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
(c) if the objecting person was not in attendance at a meeting, 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 is made within ninety (90) days of the date of the meeting,
(d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) 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, within one hundred and twenty (120) 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 shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.

8.2 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 the proper number of votes required to pass a particular measure.