

WHEN RECORDED RETURN TO:

Toll Southwest LLC

Attn: Dylan Young

14034 South 145 East, Suite 202

Draper, UT 84020

Parcel Nos.: See Exhibit A

ENT21752:2020 PG 1 of 27

**Jeffery Smith**

**Utah County Recorder**

2020 Feb 21 09:51 AM FEE 220.00 BY SS

RECORDED FOR Cottonwood Title Insurance Agency, Inc.

ELECTRONICALLY RECORDED

**SUBASSOCIATION DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS REGARDING DRAINAGE EASEMENTS FOR HIDDEN CANYON  
(AKA CANYON POINT)**

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**Effective as of February 19, 2020**

Lehi, Utah

**SUBASSOCIATION DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS REGARDING DRAINAGE EASEMENTS FOR HIDDEN CANYON  
(AKA CANYON POINT)**

This Subassociation Declaration of Covenants, Conditions, and Restrictions Regarding Drainage Easements for Hidden Canyon (aka Canyon Point) (this "Declaration") is made effective as of February 19, 2020, by TOLL SOUTHWEST LLC, a Delaware limited liability company ("Declarant").

**RECITALS**

A. Declarant owns fee simple title to that certain real property situated in the City of Lehi, Utah County, Utah, described on Exhibit A attached hereto;

B. The Property is subject to the Maps and the Maps set forth certain drainage Easements rights in favor of and benefitting the Subassociation. Declarant desires to submit the Property to the terms and provisions of this Declaration in order to provide for the operation, management, maintenance, repair, and replacement of the drainage Easements by the Subassociation.

C. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project, subject to the following covenants, conditions, restrictions, easements and limitations herein set forth which are hereby declared to be for the benefit of the entire Property and all of the Project described herein and the owners thereof, their successors and assigns;

D. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein which shall run with and be a burden upon the Property;

E. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit A and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

F. The Subassociation will be incorporated as a Utah nonprofit corporation and shall be entitled to the rights, obligations, and benefits of the Utah Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, et. seq.), as amended from time to time.

NOW THEREFORE, in consideration of the premises, Declarant hereby submits the Property to the provisions of this Declaration and declares, covenants and agrees that the Property and each part thereof shall be held, encumbered, occupied, built on and otherwise used, improved, maintained, leased, sold, occupied and otherwise transferred subject to the following covenants, conditions, restrictions, reservations, easements, liens and charges, which shall (i)

attach to and run with the land, (ii) be binding on the Property and all owners, lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, or the right to use or occupy the Property or any part thereof, and (iii) inure to the benefit of said owners, lessees and other parties. Declarant, as owner of the Property and for the purposes above set forth, declares as follows:

## ARTICLE 1

### DEFINITIONS

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:

1.1 Allocated Interest. Allocated Interest shall mean the interest of that Owner in the Common Expense liability, for purposes of voting in the Subassociation, and for other purposes indicated in this Declaration or the Community Association Act. Each Lot shall have an equal Allocated Interest.

1.2 Articles. Articles mean the Articles of Incorporation for Hidden Canyon HOA, as amended from time to time.

1.3 Assessment. Assessments means any amount charged, imposed or levied by the Board on or against a Lot or the Owner of that Lot and shall include fines, interests and costs of collection incurred by the Subassociation in connection with any action taken to bring an Owner into compliance with this Declaration.

1.4 Board. Board means the Board of Directors. The Board governs the business and affairs of the Subassociation.

1.5 Bylaws. Bylaws mean the bylaws of the Subassociation, as amended or restated from time to time. The Bylaws are attached hereto as Exhibit B.

1.6 Common Expenses. Common Expenses mean the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Easements which are maintained by the Subassociation; (b) management and administration of the Subassociation, including, without limitation, compensation paid by the Subassociation to managers, accountants, attorneys, consultants, and employees; (c) insurance and bonds required or allowed by this Declaration; (d) the establishment of reserves; (e) other miscellaneous charges incurred by the Subassociation as provided for or allowed in the Community Association Act or the Governing Documents; and (f) any other expenses of the Subassociation arising from the operation of the Subassociation and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.7 Community Association Act. Community Association Act shall mean the Utah Community Association Act, Utah Code §§ 57-8a-101 et seq., as it may exist at any given time.

1.8 Declaration. Declaration means this document, as amended, annexed, supplemented, or restated from time to time.

1.9 Director. Director means a member of the Board.

1.10 Easement(s). Easement or Easements means, collectively, all those drainage easements in favor of or benefitting Hidden Canyon HOA as disclosed and provided on the Map, and the drainage pipe(s) located with such drainage easements, including, without limitation, the drainage easements in favor of Hidden Canyon HOA on common area or private open space parcels within the Property as provided on the Map. The Subassociation owns all Easements.

1.11 Governing Documents. Governing Documents mean the Declaration, Bylaws, Articles, and Map.

1.12 Living Unit. Living Unit means a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence located on a Lot, together with all improvements located on the Lot concerned which are used in conjunction such single-family residence.

1.13 Lot. Lot means a lot, parcel, plot, or other division of land designated for separate ownership and separately numbered on the Map. Lots shall include the Living Unit, and all improvements to the Lot. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

1.14 Map or Plat. Map or Plat means the plat maps for Plat "A" Hidden Canyon, a residential subdivision, and Plat "B" Hidden Canyon, a residential subdivision, on file or to be filed for record with the Utah County Recorder, and any amendments or supplements thereto or any plat maps recorded by Declarant for additional phases in the Project.

1.15 Member. Member means a Person who is an Owner of a Lot and has the right to vote on matters presented to the Members of the Subassociation. If an Owner is not a natural person, the Owner may designate in writing an individual to act as its representative. If no representative is designated, then an officer, trustee, director, manager, or member as shown in the entity's formative documents shall be its representative.

1.16 Mortgage. Mortgage means and refers to any duly recorded mortgage or deed of trust encumbering a Lot.

1.17 Nonprofit Act. Nonprofit Act means Utah Revised Nonprofit Corporation Act, Utah Code §§ 16-6a-101 et seq., as amended or replaced from time to time.

1.18 Owner. Owner means a Person vested with record title to a Lot and whose interest in the Lot is held in fee simple, according to the records of the Utah County Recorder; provided, however, Owner shall not include a Person who holds an interest in a Lot merely as security for the performance of an obligation. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

1.19 Person. Person means an individual, corporation, partnership, association, trustee, or other legal entity.

1.20 Project or Property. Project or Property means Hidden Canyon, as shown on the Map. The Project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit A contains the legal description for the Project. The Project is not a cooperative.

1.21 Rules and Regulations. Rules and Regulations means rules and regulations adopted by the Board, from time to time, which clarify or add detail but do not conflict with this Declaration.

1.22 Subassociation. Subassociation means Hidden Canyon HOA. The Subassociation will be a Utah non-profit corporation. Failure of the Subassociation to maintain its corporate status will not result in dissolution of the Subassociation. The Subassociation may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval. As long as the Subassociation obtains the proper vote, any actions taken during any period of unincorporation shall be binding.

1.23 Turnover Meeting. Turnover Meeting means the meeting described in Section 10.1.

## ARTICLE 2

### SUBMISSION, WITHDRAWAL, EXPANSION

2.1 Submission. The Project is submitted to be bound by the Governing Documents, to provisions of the Community Association Act, and to the Nonprofit Act. All Owners shall take title subject to the Governing Documents, Community Association Act, and Nonprofit Act. The covenants, conditions, and restrictions contained in this Declaration are in addition to the obligations, covenants, conditions, and restrictions contained in the governing documents of the Traverse Mountain Master Association ("Master Association"), to which the Property has previously been submitted.

#### 2.2 Annexation; Withdrawal.

2.2.1 Prior to the Turnover Meeting, the Declarant may, in its sole and absolute discretion, expand the Project and annex to the Property any real property through a future subdivision plat and identified in an amendment or supplement to this Declaration filed for record with the Utah County Recorder's Office.

2.2.2 Prior to the Turnover Meeting, the Declarant may, in its sole and absolute discretion, withdraw any property (excluding, however, any Easements conveyed to the Subassociation by the Declarant) from the Project. Such withdrawn property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which benefits the withdrawn property and burdens any remaining property which is subject to the Declaration. Such withdrawal shall be made by recording a supplement to this Declaration with the Utah County Recorder's Office, withdrawing the effect of the covenants and restrictions of the Governing Documents from the withdrawn property. Such withdrawn

property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

**ARTICLE 3**

RESERVED

**ARTICLE 4**

PROPERTY RIGHTS IN EASEMENT

4.1 Owner's Rights. The Owner of the Lot which is burdened by an Easement shall have the use and enjoyment of such Owner's Lot to the exclusion of other Owners and Persons, subject to the Easement and the express rights of the Subassociation set forth in this Declaration.

4.2 Allocated Interest of Each Unit in the Votes of the Subassociation. The Owners of each Lot shall be entitled to vote their Allocated Interest for all matters related to the Subassociation that Owners are permitted or required to vote or approve. Each Lot shall have an equal Allocated Interest.

4.3 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Subassociation. If any conflict exists between the Plat and this Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application of controlling law. 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 obtain approval from any Owner of a Lot that has any boundary modified by the Plat.

**ARTICLE 5**

MAINTENANCE; REPAIR

5.1 Association Responsibilities. The Subassociation shall furnish and be responsible for, and pay all expenses for, the operation, maintenance, repair, and replacement of the Easements.

5.1.1 The Subassociation shall have the right to modify, remove fixtures from, add fixtures to, and otherwise modify the Easement; the Subassociation retains the right to remove and replace any improvements or condition in the Easement.

5.1.2 The Board shall determine, in its sole discretion, the appropriate maintenance standard for the Easements, so long as those areas are maintained in the best interests of the respective Owners.

5.2 Owner Responsibilities and Rights.

5.2.1 If an Owner damages any drainage pipe(s), landscaping, fences, or other features or improvements located within the Easements, then such Owner shall be responsible to

promptly repair such damage at its sole cost. If the Owner fails to repair such damage, the Subassociation may repair such damage and such Owner shall be responsible to pay to the Subassociation the costs of such work; if the Owner fails to pay such costs, such costs may be imposed as an individual Assessment.

5.2.2 Declarant and any subsequent Owner of a Lot burdened by the Easements, shall be permitted to construct buildings and other facilities and improvements (collectively, “Improvements”) upon, over, and across the Easements, and such Improvements shall not be deemed a violation of or an encroachment upon the Easements, so long as:

- (a) Improvements are not attached to a Living Unit;
- (b) Improvements are constructed in compliance with the Governing Documents and the Master Association’s governing documents;
- (c) If in constructing any Improvements, an Owner damages any drainage pipe(s), landscaping, fences, or other features or improvements located within the Easements, then such Owner shall be responsible to promptly repair such damage at its sole cost;
- (d) If after the construction of any Improvements, work is necessary to be performed on any drainage pipe(s) located below or in close proximity to any Improvements within the Easements, then the Subassociation may perform such work and the Owner of the real property having the Improvement constructed over such Easement shall be responsible to pay to the Subassociation the costs of such work arising out of the existence of the Improvement, and if the Owner fails to pay such costs, such costs may be imposed as an individual Assessment; and
- (e) If the Subassociation incurs any costs, claims, or liabilities as a result of an Owner’s construction of any Improvements within the Easements, such Owner shall be responsible to indemnify, defend, and hold harmless the Subassociation for such costs, claims, or liabilities.

5.3 Limitation of Liability. The Subassociation shall have no liability to any Owner for damage to Owner’s property or to any other person or entity for damage to any other property necessitated or resulting from the Subassociation’s maintenance, inspection, repair, or replacement of any drainage pipe(s) located within the Easements, except to the extent such damages are due solely to the gross negligence or willful act or omission of the Subassociation.

**ARTICLE 6**

RESERVED

**ARTICLE 7**

**ASSESSMENTS**

7.1 Covenant for Assessment. Each Owner of a Lot, by accepting a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to have covenanted and

agreed to pay the Subassociation all Assessments levied from time to time as provided in this Declaration, including costs of collection (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for Assessments by abandonment of their Lot, failure of the Subassociation to maintain the Easements, or non-use of the Easements. Each such Assessment, together with late fees, interest and costs of collection, shall be the personal obligation of the Owner. This personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. A successor in title is entitled to a statement from the Subassociation setting forth the amounts due by the prior Owner. The amounts set forth in the statement shall be binding upon the Subassociation.

7.2 Declarant's Assessments. Declarant shall not be subject to Assessments until such time as the Declarant elects to pay Assessments, and only for so long as Declarant elects to pay Assessments; however, Declarant shall contribute such amounts to the Subassociation as are necessary for the Subassociation to meet its obligations under the budget after collecting Assessments from any Lots owned by third parties.

7.3 Annual Budget. No regular Assessments shall be due for the year 2020. For the year 2021 and beyond, the Board shall prepare an annual budget for the Subassociation. The annual budget shall provide for: the maintenance, repair, and replacement of the Easements; all other Common Expenses; and the administration, management, operation, and reserves of the Subassociation. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

7.4 Reserve Account. After the Turnover Meeting, the Subassociation shall establish a reserve account to fund long-term capital expenditures, maintenance, and replacement items related to the Easements in accordance with the Community Associations Act. The Board shall use reasonable efforts under the circumstances at any given time, subject to the Owners' rights under the Community Associations Act, to fund the reserve account. "Reasonable efforts under the circumstances" shall be determined by the Board and does not require fully funding the reserve account. The Board shall not be personally liable for failure to fund the reserve except in the event of gross negligence or intentional misconduct of the Board members is proven in a court of law.

7.5 Regular Assessment. No regular Assessments shall be due for the year 2020. The Board shall determine the amount of the regular Assessments to be paid by Owners of each Lot by multiplying the total budgeted amount in the annual budget by the Allocated Interest for each Lot. The Subassociation may collect the regular Assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis, in accordance with the annual budget established pursuant to Section 7.3. Written notice of the regular Assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular Assessment will be due. Apart from the initial notice of regular Assessment, the Subassociation is not obligated to send periodic invoices for regular Assessments. If the Board fails to adjust a regular Assessment, the amount of the last regular Assessment and payment schedule will continue in effect, whether or not notice is sent.

7.6 Special Assessment. The Subassociation may levy a special Assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction,



maintenance, repair, or replacement of the Easements. The Subassociation may levy a special Assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

7.7 Supplemental Assessment. If the regular Assessments are inadequate to pay the Common Expenses pursuant to an annual budget, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Subassociation may levy a supplemental Assessment to fund the supplemental budget. The Subassociation may levy a supplemental Assessment up to 50% of the original annual budget without approval from the Owners. If a supplemental assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

7.8 Individual Assessment. Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual Assessments include, without limitation:

7.8.1 Assessments levied against a Lot to reimburse the Subassociation for costs incurred in correcting a violation of the Governing Documents;

7.8.2 Fines, late fees, interest, collection costs (including attorney's fees); and

7.8.3 Any charge described as an individual Assessment in the Declaration.

7.9 Apportionment of Assessments. Regular, special, and supplemental Assessments will be apportioned equally among the Lots, in accordance with each Lot's Allocated Interest. Individual Assessments shall be apportioned exclusively to the Lots liable under this Declaration, or benefitted or affected by reason of the basis, for the individual Assessment.

7.10 Nonpayment of Assessment. Assessments not paid within 10 days after the due date established by the Board will be late and subject to interest at 18% *per annum* on any delinquent balance and a \$25.00 late fee. Late fees may only be charged once per missed payment.

7.11 Application of Payments. Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7.12 Acceleration. If an Owner fails to pay their Assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments against that Owner due that year.

7.13 Suspension of Voting Rights. If an Owner has a delinquent Assessment balance, the Subassociation may suspend their right to vote in any meeting of the Subassociation, and take such other action allowed by law.

7.14 Lien for Assessment. All Assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot

against which the Assessment is made. The Subassociation shall file a notice of lien with the Utah County Recorder as evidence of nonpayment.

7.15 Enforcement of Lien. Without waiving its right to personally pursue an Owner for unpaid assessments, the Subassociation may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

7.16 Appointment of Trustee. The Owners and Declarant hereby convey and warrant pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to a member of the Utah State Bar, with power of sale, the Lots and all improvements on the Lots for the purpose of securing payment of Assessments under the terms of the Declaration.

7.17 Subordination of Lien. A lien for Assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for Assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser at foreclosure's obligation to pay the past six (6) months of Assessments, late fees, and penalties for the Lot.

7.18 Fines. The Subassociation shall give an Owner 7-day written notice to cure a violation of the Governing Documents prior to assessing a fine against such Owner's Lot.

## ARTICLE 8

### RESERVATION; NO OBSTRUCTION; RULES AND REGULATIONS

8.1 Reservation. There is reserved to Declarant and the Subassociation access rights in and to the Easements for the installation, construction, maintenance, reconstruction, repair, and replacement of the Easements and the drainage pipe(s) and facilities located in the Easements.

8.2 No Obstruction of Easements. Subject to the provisions of this Declaration, there shall be no obstructions of the Easements by the Owners without the prior written consent of the Board. The Board may by Rules and Regulations prohibit or limit the use of the Easements as may be reasonably necessary for protecting the Easements.

8.3 Rules and Regulations. The Subassociation shall have the authority to promulgate and enforce such reasonable Rules and Regulations as may aid the Subassociation in carrying out any of its functions and to ensure that the Easements are maintained and used in a manner consistent with the interest of the Owners. No Owner shall violate the Rules and Regulations for the use of the Lots and of the Easements as adopted from time to time by the Board. An Owner shall be responsible to advise their guests and invitees about the Rules and Regulations and shall be responsible for their guests and invitees compliance with the Rules and Regulations. Pursuant to Utah Code 57-8a-218(15), the requirements of Utah Code 57-8a-218 are hereby modified to not apply to the Subassociation.

## ARTICLE 9

### MEMBERSHIP AND ASSOCIATION

9.1 Membership. Every Owner is a Member of the Subassociation. Membership in the Subassociation is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

9.2 Voting Rights. Voting is governed by the Bylaws.

9.3 Status and Authority of Board. The Board is the governing body of the Subassociation. It is obligated to manage, operate, and maintain the Easement and to enforce the Governing Documents. The Board has exclusive authority to act in the Subassociation's name. Any action taken by the Board on behalf of the Subassociation will be deemed to be done in the Subassociation's name. The rights and powers of the Board are governed by the Bylaws.

9.4 Composition and Selection of Board. The Bylaws govern how the Board is established and selected.

9.5 Adoption of Bylaws. The Subassociation has adopted Bylaws which are being recorded simultaneously with this Declaration.

## ARTICLE 10

### DECLARANT RIGHTS

10.1 Administrative Control of Association. Declarant shall assume full administrative control of the Subassociation through an interim Board appointed by the Declarant, which shall serve until the Turnover Meeting.

The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than three (3) years from the date the Declarant sells the last Lot of which Declarant is considered the Owner. For purposes of calculating the date when Declarant sells its last Lot, a bulk sale of the Project to another developer shall be excluded, it being the intent of this provision that the Turnover Meeting shall be no later than three (3) years after Declarant, or its assigns or successors, sells the last Lot to a builder or owner to construct a Living Unit.

Declarant may elect to relinquish control of the Subassociation at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

10.2 Other Rights. In addition to any other rights under the Governing Documents, as long as Declarant owns at least one (1) Lot within the Project, unless specifically and expressly bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

10.3 Assessment Rights. The Declarant shall have the right to set all Assessments, regular and special, prior to the Turnover Meeting. Notwithstanding the Assessment of other Lots, no Lots owned by Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as Declarant elects to pay Assessments.

10.4 Assignment of 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 Subassociation or any other Person or entity prior to the end Turnover Meeting. In the case of 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, or unfinished Living Units.

10.5 No Modification of Declarant Rights. Any Declarant rights in the Governing Documents, and specifically in this Article 10, shall not be substantively or procedurally altered without the written consent of the Declarant until three (3) years have passed after the Turnover Meeting, 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 10, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 10 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.

10.6 Declarant Exemption from Statutory Obligations. Pursuant to Utah Code Ann. 57-8a-217(6), Declarant is hereby exempt from the provisions of 57-8a-217. Pursuant to Utah Code Ann. 57-8a-211(10), Utah Code Ann. 57-8a-211(2)-(9), shall not apply or have any effect prior to the Turnover Meeting and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund prior to the Turnover Meeting.

## ARTICLE 11

### COMPLIANCE AND ENFORCEMENT

11.1 Compliance. Each Owner of a Lot shall comply with the provisions of the Governing Documents and the Rules and Regulations adopted pursuant thereto and any applicable law or statute. Failure to comply therewith shall be grounds for an action or suit maintainable by the Subassociation.

11.2 Remedies. Violation of any provisions of the Governing Documents, or of any decision of the Subassociation made pursuant to such documents, shall give the Board acting on behalf of the Subassociation, the right, in addition to any other rights set forth in the Governing Documents, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

11.2.1 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

11.2.2 To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board;

11.2.3 The right of the Subassociation to suspend the voting rights in the Subassociation and the rights to use of the Easement after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents; or

11.2.4 Bring suit or action against the Owner on behalf of the Subassociation and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. Costs and attorney's fees shall be an individual Assessment.

11.3 Action by Owners. Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Subassociation to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

11.4 Injunctive Relief. Nothing in this Article shall prevent an Owner, the Subassociation, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

11.5 Hearing. The Board shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's resolution on hearings.

11.6 Litigation. Because litigation can be slow, expensive, uncertain, and negatively impact the property values within a community, the Subassociation shall only enter into litigation by approval of Owners holding eighty percent (80%), or the highest number allowed by law, of the voting rights of the Subassociation except for litigation to collect Assessments, enforce the Governing Documents (including fines or curative measures), or to defend itself.

## ARTICLE 12

### INSURANCE

12.1 Types of Insurance Maintained by the Subassociation. The Subassociation may, at its election, maintain the property or liability insurance coverages, or other insurance coverage reasonably adopted by the Board.

12.2 Premium as Common Expense. The premiums for the Subassociation's insurance policies shall be a Common Expense.

12.3 Insurance by Owner. Owners shall insure their Lots, the Easements located on such Owner's Lot, and all improvements thereon for the full replacement value. If requested, an Owner shall provide the Subassociation with a certificate of insurance.

12.4 Payment of Deductible. The deductible on a claim made against a Subassociation policy shall be allocated to the party which caused the loss. The Subassociation shall have the

right to determine which party caused the loss. If the loss is a “no-fault” loss, the Subassociation shall pay the deductible.

12.5 Right to Adjust Claims. The Subassociation has the right and authority to adjust claims.

12.6 Insurance Proceeds. If an Owner suffers a loss to their Lot or the Easements or improvements thereon, they shall use any insurance proceeds to restore the Lot or the Easements or improvements to their original or better condition.

12.7 Damage and Destruction of Easement. Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Easements, the Subassociation shall use any insurance proceeds to restore the Easements to their original or better condition.

## ARTICLE 13

### AMENDMENT, DURATION AND TERMINATION

#### 13.1 Amendments.

13.1.1 Approval Required. Except as otherwise provided in this Declaration, this Declaration may be amended by approval of Owners holding sixty-seven percent (67%) of the voting rights of the Subassociation. The Board without Owner approval may amend the Declaration to correct spelling and grammatical errors.

13.1.2 Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Subassociation as being adopted in accordance with this Declaration is acknowledged and is recorded in the Utah County Recorder’s Office, Utah.

13.1.1 Declarant’s Right to Amend. Until the Turnover Meeting, the Declarant shall have the right to amend, revise, and modify this Declaration, the Bylaws, and the Rules and Regulations 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 person 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.

13.2 Duration; Termination. This Declaration shall continue in perpetuity unless and until the Declarant files of a notice of termination in the office of the Utah County Recorder at any time prior to the Turnover Meeting, or (ii) the Members vote by not less than sixty-seven percent (67%) of all Members of the Subassociation to terminate the Declaration and dissolve the Subassociation. In the event this Declaration is terminated pursuant to this Section 13.2, this

Declaration shall be terminated by recording a notice with the Utah County Recorder and the Subassociation shall be dissolved in accordance with Utah law.

## ARTICLE 14

### MISCELLANEOUS PROVISIONS

14.1 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.2 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

14.3 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and Rules and Regulations adopted by the Subassociation restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

14.4 Covenants Run with the Land. The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Subassociation, all parties who hereafter acquire any interest in or occupy a Lot or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner shall comply with the Governing Documents. All interests in the Lots shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for damages or injunctive relief by the Subassociation or an Owner. By acquiring any interest in a Lot, each Owner agrees to be bound by the Governing Documents.

14.5 Waiver, Precedent and Estoppel. No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Subassociation or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Subassociation or Owner as to any similar matter.





**Exhibit A-Legal Description**

Lots 40 through 92, inclusive, and 94 through 155, inclusive, HIDDEN CANYON PLAT B, a Residential Subdivision, according to the official plat thereof as recorded in the office of the Utah County Recorder.

AND

Lot 93, PLAT "B" HIDDEN CANYON, according to the Official Plat thereof recorded March 18, 2019 as Entry No. 22008:2019 in the Office of the Utah County Recorder.

LESS AND EXCEPTING THEREFROM a portion of said lot described as follows:

Beginning at the common Easterly (front) Lot Corner of Lot 93, PLAT "B" HIDDEN CANYON, according to the Official Plat thereof recorded March 18, 2019 as Entry No. 22008:2019 in the Office of the Utah County Recorder and Lot 29, PLAT "A" HIDDEN CANYON, according to the Official Plat thereof recorded June 21, 2018 as Entry No. 58038:2018 in the Office of the Utah County Recorder; thence N30°53'45"W 115.01 feet; thence N27°06'40"E 7.23 feet; thence S30°04'24"E 118.85 feet; thence S59°06'15"W 4.42 feet to the point of beginning.

Tax Id No.: 41-926-0040 thru 0092, 41-926-0094 thru 0155, 41-926-0161

AND

Lots 1 through 28, inclusive, and 30 through 39, inclusive, HIDDEN CANYON PLAT A, a Residential Subdivision, according to the official plat thereof as recorded in the office of the Utah County Recorder.

AND

Lot 29, PLAT "A" HIDDEN CANYON, according to the Official Plat thereof as recorded in the office of the Utah County Recorder.

AND ALSO a portion of Lot 93, PLAT "B" HIDDEN CANYON, according to the Official Plat thereof recorded March 18, 2019 as Entry No. 22008:2019 in the Office of the Utah County Recorder, more particularly described as follows:

Beginning at the common Easterly (front) Lot Corner of Lot 93, PLAT "B" HIDDEN CANYON, according to the Official Plat thereof recorded March 18, 2019 as Entry No. 22008:2019 in the Office of the Utah County Recorder and Lot 29, PLAT "A" HIDDEN CANYON, according to the Official Plat thereof recorded June 21, 2018 as Entry No. 58038:2018 in the Office of the Utah County Recorder; thence N30°53'45"W 115.01 feet; thence N27°06'40"E 7.23 feet; thence S30°04'24"E 118.85 feet; thence S59°06'15"W 4.42 feet to the point of beginning.

AND

Parcels C, D, & F, COMMON AREA, contained within PLAT "A" HIDDEN CANYON, according to the official plat thereof as recorded in the office of the Utah County Recorder.

AND

PART PARCEL B, COMMON AREA, PLAT A, HIDDEN CANYON SUB., DESCRIBED AS FOLLOWS; COM N 6816.95 FT & W 3989.57 FT FR SE COR. SEC. 30, T4S, R1E, SLB&M.; S 77 DEG 2' 39" E 38.99 FT; ALONG A CURVE TO R (CHORD BEARS: N 82 DEG 58' 37" E 138.56 FT, RADIUS = 207.97 FT); ALONG A CURVE TO L (CHORD BEARS: N 67 DEG 19' 22" E 17.26 FT, RADIUS = 15 FT);

Exhibit A-1

ALONG A CURVE TO L (CHORD BEARS: S 2 DEG 24' 1" E 259 FT, RADIUS = 228.04 FT); S 37 DEG 0' 22" E 155.72 FT; ALONG A CURVE TO R (CHORD BEARS: S 18 DEG 9' 11" E 106.65 FT, RADIUS = 164.99 FT); N 88 DEG 32' 55" W 13.02 FT; ALONG A CURVE TO R (CHORD BEARS: S 52 DEG 14' 19" W 31.35 FT, RADIUS = 20 FT); N 76 DEG 9' 47" W 73 FT; ALONG A CURVE TO L (CHORD BEARS: S 87 DEG 8' 28" W 160.31 FT, RADIUS = 279 FT); S 70 DEG 26' 47" W 11.64 FT; N 76 DEG 2' 31" W 272.85 FT; N 13 DEG 57' 36" E 87.13 FT; N 30 DEG 17' 36" E 385.16 FT TO BEG.

Tax Id No.: 41-901-0001 thru 0028, 41-901-0030 thru 0039, 41-901-0048, 41-901-0042, 41-901-0043, 41-901-0045, 41-901-0047

Exhibit B – **Bylaws of Hidden Canyon HOA****BYLAWS OF HIDDEN CANYON HOA****ARTICLE 1****BYLAW APPLICABILITY AND DEFINITIONS**

1.1 **Purpose of Bylaws.** These Bylaws are adopted for the regulation and management of the affairs of Hidden Canyon HOA, a Utah nonprofit corporation (the “Subassociation”), organized to be the Subassociation to which reference is made in the Subassociation Declaration of Covenants, Conditions, and Restrictions Regarding Drainage Easements for Hidden Canyon, as amended or supplemented from time to time (the “Declaration”), to perform the functions as provided in the Declaration and to further the interests of “Owner(s)” of “Lots” within the Development.

1.2 **Definitions.** The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

1.3 **Bylaw Applicability.** The provisions of these Bylaws are binding upon the Subassociation and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

**ARTICLE 2****ASSOCIATION**

2.1 **Composition.** All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Subassociation. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Subassociation’s affairs.

2.2 **Annual Meeting.** Annual meetings shall be held once a year. The Board shall determine the date, time, and place of the annual meeting. The Subassociation shall send notice of annual meetings at least 10 days but not more than 60 days in advance of the meeting. At the annual meeting the Subassociation shall conduct the following business in any order the Board sees fit:

- 2.2.1 Roll call and verification of quorum;
- 2.2.2 Approval of minutes from preceding annual meeting;
- 2.2.3 Reports of officers;
- 2.2.4 Special committee reports;

- 2.2.5 Election of Directors;
- 2.2.6 Review of reserve analysis;
- 2.2.7 Unfinished business from preceding annual meeting; and
- 2.2.8 New business.

2.3 Special Meeting. Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Subassociation shall schedule and send notice of a special meeting within 30 days of request. The notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Subassociation shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

2.4 Place of Meeting. Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Utah County, State of Utah.

2.5 Conduct of Meeting. The President shall preside over all meeting of the Subassociation. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

2.6 Quorum. A quorum shall be the Owners present in person or by proxy at a meeting.

2.7 Voting. The Subassociation shall initially have the following two classes of votes:

2.7.1 Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Subassociation is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

2.7.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to 2 votes for every Lot owned by Declarant plus 2 votes for every class A vote. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last Lot of which Declarant is considered the Owner.

2.7.3 If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners of such Lot. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Subassociation may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

2.7.4 Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of Directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

2.8 Good Standing. An Owner shall be in good standing if such Owner has paid assessments levied against his Lot, including late fees, interest, fines, collection costs, and attorney fees; an Owner must have paid in full all such amounts at least three days prior to the meeting or action.

2.9 Proxies. An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Subassociation in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Subassociation, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

2.10 Mail-in Ballots. Any action requiring a vote of the Owners, except election of Directors, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Nonprofit Act Section 16-6a-709, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

2.11 Written Consent in Lieu of Vote. Any action requiring a vote of the Owners, except election of Directors, may be taken by written consent. Action by written consent shall comply with the procedures set forth in Nonprofit Act Section 16-6a-707, as amended from time to time. Written consents may be collected electronically.

2.12 Record Date. The record date for determining which Owners are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Subassociation on the record date shall be the people entitled to vote on an action.

## ARTICLE 3

### BOARD OF DIRECTORS

3.1 Number and Qualification of Directors. There shall be three Directors. Except for Directors appointed by Declarant, Directors must be Members in good standing.

3.2 Selection and Term of Directors. Prior to the Turnover Meeting, Directors shall be appointed by the Declarant. After the Turnover Meeting, Directors shall be elected by the Owners. Directors shall serve for a term of two years and shall serve until their successors have been elected. There is no limit on the number of terms an Owner may serve as a Director. Directors terms shall be staggered as follows: (i) two Directors shall be elected in years ending with an even number; and (ii) one Director shall be elected in years ending with an odd number. At the initial election of the Directors, the newly elected Directors shall determine their terms.

3.3 Vacancies. After the Turnover Meeting, Director vacancies for any reason other than removal by vote of the Subassociation shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director.

3.4 Removal of Directors. After the Turnover Meeting, a Director may be removed with or without cause by vote of a majority of all Owners. If the Owners propose to remove a Director, the Subassociation shall give the Director and Owners at least 15-day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove the Director. At any meeting where a Director is removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

If any Director shall fail to appear at three (3) consecutive regular Board meetings or fifty percent (50%) or more of the regular meetings within any calendar year, after having received proper notice of the meetings, and after the Board has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Directors may by unanimous vote remove that Director and appoint a new Director. After the Turnover Meeting, any Director who allows his Assessments to become more than 90 days past due may be removed and replaced by vote of a majority of the Board. The Board shall give the Director 10-day written notice to cure the default prior to voting to remove the Director.

3.5 Organization Meeting. The Directors shall hold a meeting following the annual Owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted at the next regular meeting of the Board or may be conducted at a special meeting.

3.6 Regular Meetings. The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least three days prior to the meeting.

3.7 Special Meetings. A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

3.8 Conduct of Meetings. The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

3.9 Quorum. A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once

established, a quorum will be present even if Directors leave. Directors may attend a meeting telephonically.

3.10 Notice and Waiver of Meeting Notice. Notice to Directors may be personally delivered, mailed, or delivered by any available electronic means, including, without limitation: text, email, fax, or posting on the website. Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

3.11 Action without Meeting. Any action by the Board may be taken without a meeting if all the Directors submit a written vote either for, against, or abstaining from the action. Written votes may be given in person, by mail, or electronically. The Subassociation shall file the written votes with its record of minutes.

3.12 Powers and Duties. The Board shall manage the affairs and business of the Subassociation. The Board is vested with all power and authority necessary to administer the affairs of the Subassociation in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law. Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

3.12.1 Prepare an annual budget and establish what constitutes a Common Expense;

3.12.2 Adopt and amend rules, regulations, policies, and procedures governing the Easements, administration of the Subassociation, and to enforce and interpret the Governing Documents;

3.12.3 Delegate authority to a managing agent to act on behalf of the Subassociation;

3.12.4 Provide for the maintenance, repair, and replacement of the Easements;

3.12.5 Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Easements and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Subassociation;

3.12.6 Open and maintain bank accounts on behalf of the Subassociation. Designate authorized signers for the bank accounts;

3.12.7 File lawsuits or initiate other legal proceedings on behalf of the Subassociation;

3.12.8 Defend lawsuits, administrative actions, and other legal proceedings against the Subassociation;

3.12.9 Enter into contracts on behalf of the Subassociation;

3.12.10 Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;

3.12.11 Keep books with detailed accounts of the receipts and expenditures of the Subassociation. Make the books available to the Owners as required by the Community Association Act and Nonprofit Act. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, retain an independent auditor to audit the books;

3.12.12 Grant easements, licenses, or permission over, under, and through the Easements;

3.12.13 Upon approval by 67% of the Members, to convey Easements;

3.12.14 Create committees;

3.12.15 Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act; and

3.12.16 Any act allowed or required to be done in the name of the Subassociation.

3.13 Manager. The Board shall employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.

3.14 Compensation. Directors shall not be compensated for their work. However, Directors may seek reimbursement for actual costs and mileage incurred during their service.

3.15 Limitation of Liability. The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Subassociation shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Subassociation, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

## ARTICLE 4

### OFFICERS

4.1 Election and Term of Officers. The Board shall elect the officers of the Subassociation. Officers shall be elected from the Directors. Officers shall serve one-year terms and shall serve until their successor is elected.



4.2 Removal of Officers. The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace them.

4.3 Offices. The Subassociation officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers, who need not be Directors, as it may deem necessary. Except for the president, the same person may hold two offices.

4.3.1 President. The president shall be the chief executive officer. He or she shall preside at meetings of the Subassociation and the Board. He or she shall be an unofficial member of all committees. He shall have general and active management of Association business. He or she shall see that all resolutions and policies of the Subassociation are executed.

4.3.2 Vice President. The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Director to fulfill the duties on an interim basis.

4.3.3 Secretary. The secretary shall attend all meetings and take minutes thereof. He or she shall also make record of all resolutions, rule, policies, and procedures. He or she shall give or cause to be given notice of all meetings. He or she shall compile or cause to be compiled a complete list of the owners and their contact information.

4.3.4 Treasurer. The treasurer shall oversee the finances of the Subassociation. He or she shall be responsible to ensure that the Subassociation has full and accurate records of income and expenses. He or she shall give financial reports at regular Board meetings and the annual Owners' meeting.

4.4 Delegation of Duties. The Subassociation officers may delegate any of their duties to a manager or to committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.

4.5 Compensation. Officers shall not be compensated for their work. However, officers may seek reimbursement for actual costs and mileage incurred during their service.

## ARTICLE 5

### NOTICE

5.1 Manner of Notice. All notices and other communications required under the Governing Documents shall be in writing.

5.1.1 Notices to Owners may be delivered using the following methods:

(a) By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Subassociation;

(b) By hand to the address of the Lot or to any other address designated by the Owner in writing to the Subassociation;

(c) By posting on the Subassociation website; or

(d) By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Subassociation.

5.1.2 Notice to the Subassociation may be delivered using the following methods:

(a) By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Subassociation as designated in writing to the Owners; or

(b) By facsimile, electronic mail, or any other electronic means to the Subassociation's official electronic contact as designated in writing to the Owners.

(c) Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

5.2 Waiver of Notice. Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

## ARTICLE 6

### FINANCES

6.1 Fiscal Year. The fiscal year of the Subassociation shall be the calendar year.

6.2 Checks, Agreements, Contracts. All checks, contracts, deeds, leases, and other instruments used for expenditures or obligations may be executed by any person authorized by the Board.

6.3 Availability of Records. Association financial records shall be available as provided by the Community Association Act and Nonprofit Act.

## ARTICLE 7

### AMENDMENT TO BYLAWS

7.1 Amendments. These Bylaws may be amended by the Board, unless it would result in changing the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. These Bylaws may also be amended by a majority vote of a quorum of the Owners.

7.2 Recording. Any amendment to these Bylaws shall become effective on the date it is recorded in the Utah County Recorder's Office.

**ARTICLE 8**

**MISCELLANEOUS**

8.1 Office. The principal office of the Subassociation shall be located at any place within the State of Utah which may be designated from time to time by the Board.

8.2 Conflicts. The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Subassociation.

8.3 Severability. If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

8.4 Waiver. No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

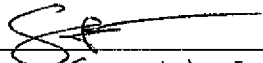
8.5 Captions. The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

8.6 Gender, etc. Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by its duly authorized officers.

**DECLARANT:**

**TOLL SOUTHWEST LLC,**  
a Delaware limited liability company

By:   
Name: SCOTT LUTZ  
Its: VICE PRESIDENT