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ANDREA ALLEN  
UTAH COUNTY RECORDER  
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RECORDED FOR SARATOGA SPRINGS CITY

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR RIVERSIDE CROSSING SUBDIVISION LOTS 1, 2, 11, 12, 13 AND 14**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR RIVERSIDE CROSSING SUBDIVISION LOTS 1, 2, 11, 12, 13 AND 14 (this “**Declaration**”) is made and executed by each of the undersigned owners of the subject commercial lots (collectively, the “**Declarants**”).

**RECITALS**

A. The Declarants are the owners of the subject lots in the Riverside Crossing Subdivision, located the City of Saratoga Springs (the “**City**”), Utah County, State of Utah, more particularly described on **Exhibit A** attached hereto (the “**Affected Lots**”). The Affected Lots are comprised of Lots 1, 2, 11, 12, 13 and 14 of the Riverside Crossing Subdivision, as shown on the official subdivision plat thereof on file with the Utah County Recorder’s Office (the “**Plat**”). This Declaration applies only to the Affected Lots. It does not encumber or affect any of the other lots shown on the recorded Plat. For purposes of this Declaration, the term “**Project**” means and refers only to the Affected Lots and the improvements and Common Areas located on or immediately adjacent to the Affected Lots.

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

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

- ii. Protecting long-term property values and a desired quality of life in the Project;
- iii. Maintaining the Common Areas located within the Project in accordance with these Covenants and with City standards; and

iv. Providing for mandatory dispute resolution procedures and requirements to avoid litigation, as set forth in Article 13 of this Declaration.

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

## ARTICLE 1

### DEFINITIONS

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

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

1.2 “**Assessment**” means any of the fees, assessments, or payments required to be made by Owners of the Affected Lots, including the annual assessments, supplemental assessments, and special assessments, as more particularly described in Article 4 of this Declaration.

1.3 “**Association**” means Riverside Crossing Owners Association, Inc., a Utah non-profit corporation.

1.4 “**Bylaws**” means the *Bylaws of Riverside Crossing Owners Association, Inc.*

1.5 “**Board**” means the Board of Directors of the Association.

1.6 “**Building**” or “**Buildings**” means the principal structure on any Affected Lot. Buildings may be attached, and the structure comprising a Building or Buildings may straddle several Lots. In other words, for purposes of this Declaration a Building may be part of a larger structure and two or more Buildings may be part of the same structure.

1.7 “**City**” means the City of Saratoga Springs, a political subdivision of the State of Utah.

1.8 “**Common Areas**” means the improvements or other portions of the Project that are intended for common use by all the Owners or which are held or maintained by the Association for the benefit of the Owners. The Common Areas are more particularly discussed in Section 5.1 of this Declaration. Unless expressly stated otherwise in this Declaration, Improvements, landscaping, Buildings, structures, and other physical features located on or within the boundaries of an Affected Lot

are not Common Areas, but are the responsibility of the Owner of the Affected Lot to maintain in good condition and repair in accordance with applicable City ordinances.

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

1.10 “**County**” means Utah County, Utah.

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

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

1.13 “**Declarants**” means each of the undersigned owners of the Affected Lots, and any assign or successor that acquires an ownership interest in one or more of the Affected Lots and takes a written assignment of Declarant’s rights.

1.14 “**Declaration**” means this *Declaration of Covenants, Conditions and Restrictions* as it may be amended from time.

1.15 “**First Mortgage**” means a recorded Mortgage or consensual lien granted by an Owner against an Affected Lot and which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute. “**First Mortgagee**” means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.

1.16 “**Improvement**” means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Building, garage, lighting feature, patio, sidewalk, foundation, awning, fence, storage structure or other product of construction and also includes landscaping.

1.17 “**Lot**” or “**Affected Lot**” means a subdivided and individually numbered parcel within the Project as designated on the Plat Map recorded with the County Recorder’s Office. The term Affected Lot includes any Building or other Improvement constructed thereon. The Lots or “Affected Lots” that are subject to this Declaration are only those listed in **Exhibit A** hereto, and do not include any other lots depicted on the recorded Plat.

1.18 “**Member**” means a person or entity who is a member of the Association.

1.19 “**Mortgage**” means any mortgage, deed of trust, or other document pledging any portion of an Affected Lot or interest therein as security for the payment of a debt or obligation.

1.20 “**Mortgagee**” means the mortgage or beneficiary identified in a Mortgage.

1.21 “**Owner**” means the person or entity vested with legal, record fee simple title to any Affected Lot. If there is more than one record holder of legal title to an Affected Lot, each shall be an Owner.

1.22 “**Percentage Interest**” means the percentage applicable to each Affected Lot (and the Owner thereof) as set forth in Section 3.3 below. Each Owner shall be responsible to pay its Percentage Interest of all Assessments to the Association.

1.23 “**Plat**” means the recorded subdivision plat of the Riverside Crossing Subdivision, on file with the County Recorder’s Office.

1.24 “**Project**” means and refers only to the Affected Lots and the improvements and Common Areas located on or immediately adjacent to the Affected Lots.

1.25 “**Rules and Regulations**” means the rules, regulations, and restriction which are not inconsistent with this Declaration or the Bylaws, and (i) which are duly approved and adopted by the Board, (ii) copies of which are provided to all Owners and their respective tenants (if any).

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Property. The Affected Lots, identified in Exhibit A shall be, held, occupied, transferred, sold, and conveyed subject to the Covenants set forth in this Declaration. As of the date of this Declaration, no portion of the Project is subject to the Condominium Association Act, Utah Code § 57-8-1. This Declaration, however, does not prohibit any Building constructed on an Affected Lot from being organized as a condominium and made subject to the Condominium Association Act.

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

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

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

## 2.5 Enforcement of Covenants.

2.5.1 By the Association; Legal action or Fines. The Association, through its Board, shall have the right to enforce compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations adopted by the Board including, if the Board deems necessary, through legal action. Consistent with the terms of the Act, the Board may establish a schedule of reasonable fines to be imposed on non-complying Owners after appropriate notice has been provided to such Owners. The obligation to pay such fines imposed by the Association shall be a personal obligation of such Owner and shall also be secured by the Association's lien on such owner's Lot as provided in Article 4 of this Declaration. The Board may also suspend any services provided to an Owner who fails to comply, or whose Lot does not comply, with the Covenants set forth in this Declaration. The Board may also suspend voting rights or privileges related to Common Areas for non-compliance. Any costs associated with the Association's enforcement of this Declaration may be assessed to the non-complying Owner as a special assessment.

2.5.2 By an Owner. Any Owner aggrieved by another Owner's non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations adopted by the Board may commence an action seeking to enforce compliance with the same. In any such legal action, the prevailing party shall be entitled to an award of reasonable costs and attorney fees.

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

## ARTICLE 3

### ASSOCIATION AND MEMBERSHIP THEREIN

3.1 Association Membership. Each Owner is also a member of the Association. Such membership automatically becomes affective by an Owner's acceptance of a deed for an Affected Lot, whether or not it shall be so expressed in such deed. By accepting a deed to an Affected Lot, an Owner is deemed to have agreed to be bound by the Covenants, the Bylaws, and by such reasonable Rules and Regulations as may, from time to time, be established by the Association. Membership is mandatory for all Owners. When more than one person or entity is an Owner of an Affected Lot, all such persons or entities shall be Members. Membership shall be appurtenant to and may not be separated from

ownership of an Affected Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Lot, whether by conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of Utah. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation.

3.2 Transfer. Upon the transfer or conveyance of any Affected Lot, the transferee or grantee shall become a Member, and the transferor or grantor shall immediately cease being a Member. The Board shall maintain a list of all Members and shall note each transfer of ownership on such list. Upon the transfer or conveyance of any Affected Lot, the selling or transferring Owner shall promptly inform the Association of the name of the transferee or grantee.

3.3 Voting Rights & Percentage Interests. The voting rights of each Owner of an Affected Lot are, and shall always be, as follows:

<u>Affected Lot</u>	<u>Voting Rights</u>	<u>Percentage Interest</u>
Lot #1	32.21 votes	32.21%
Lot #2	17.79 votes	17.79%
Lot #11	11.00 votes	11.00%
Lot #12	14.58 votes	14.58%
Lot #13	13.02 votes	13.02%
<u>Lot #14</u>	<u>11.40 votes</u>	<u>11.40%</u>
Total	100 votes	100%

The above schedule of voting rights and Percentage Interests cannot be altered or amended except by unanimous written approval of all Owners. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed 100 votes, and the votes for each Lot shall not exceed the number of votes set forth in the schedule above. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the total votes of the Association (i.e., at least 51 votes). All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

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

designating a proxy, an Owner shall be conclusively deemed to have received adequate notice of such meeting or such vote.

3.5 Board of Directors. The Board shall be the governing body of the Association. In addition to those set forth herein, the powers, rights, privileges, and duties of the Board shall be set forth in the Bylaws. The Declarants shall appoint the initial members of the Board, which shall number no less than three (3) directors and not more than Seven (7) directors. Thereafter, the members of the Board shall be chosen, removed, or replaced by the majority vote of the voting interests of the Association in accordance with the provisions of the Bylaws.

3.6 Professional Management. The Association may carry out the functions required of it pursuant to this Declaration, the Bylaws, or the Rules and Regulations, to the extent such functions are properly delegable, by and through a professional manager (“**Manager**”). If a Manager is engaged, the Manager shall be an independent contractor and not an employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by the Board, be authorized to perform any of the properly delegable functions or acts required or permitted or performed by the Association.

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

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

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

#### **ARTICLE 4**

#### **ASSOCIATION ASSESSMENTS**

4.1 Covenant to Pay Assessments. The Owner of each Affected Lot, excluding the Declarants whose obligations regarding Assessments are set forth below, by accepting a Deed for said Lot, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the Association all fees, annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

4.2 Nature and Allocation of Assessments.

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

4.2.2 Allocation of Common Expenses. The Common Expenses will be apportioned and assessed to all Owners in according with their respective Percentage Interest as shown in the schedule set forth above in Section 3.3; provided, however, that if a portion of Common Expenses is attributable solely to the Owners of certain Buildings or Lots (or the need for which is caused solely by certain Owners or Buildings), such Common Expenses will be apportioned only to, and must be paid only by, the responsible Owner or category of Owners.

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

4.3.1 Annual Assessment. Each Owner shall pay an annual assessment for each Lot owned by such Owner, and a prorated portion of such annual assessment shall be due upon each Owner taking title such Lot. The annual assessment shall be the Lot's share of the total annual amount necessary for the Association to perform all of its obligations, whether imposed by the Act, this Declaration, or the Bylaws. Without limitation, the annual assessment shall include each Lot's share of the Common Expenses including the cost to maintain and preserve the Common Areas, including insurance thereon, the amounts necessary to perform the Association's other maintenance obligations, the amounts necessary to fund the Association's reserve fund in a manner consistent with the Act, the Association's administrative expenses, and the amount any obligations imposed on the Association by any applicable law, ordinances, or regulations, all of which shall be identified in the Association's budget. The annual assessment shall be fixed, and from time to time adjusted, by the Board in accordance with the provisions of the Act. At a minimum, the Board or the Declarant shall review the annual assessment on an annual basis and make such adjustments as are necessary. Each Owner (each Affected Lot) shall be responsible to pay its Percentage Interest of the assessments in accordance with the schedule of Percentage Interests set forth in Section 3.3 above. The Board may require that the annual assessment attributable to each Lot be paid annually, or be divided and paid in equal quarterly or monthly shares and paid in the form of a quarterly or monthly membership assessment.



4.3.2 Supplemental Assessment. In the event the annual assessment is insufficient to meet the Association's regular recurring obligations in any given fiscal year, the Board may assess a supplemental assessment against each Lot for a share of any supplemental amount necessary to meet the Association's annual obligations. Each Lot's share of a supplemental assessment shall be determined in the manner for annual assessments as set forth in Article 4 of this Declaration.

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

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

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

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

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

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

4.8 Exemption for Declarant. No assessment for an Affected Lot owned by a Declarant shall be imposed or owed until a certificate of occupancy for a Building on such Lot is issued by the City. Thereafter, the Affected Lot shall be responsible to pay its portion of all assessments.

4.9 Effect of Non-Payment and Remedies.

4.9.1 Late Fees and Interest. Any assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board. In addition, all fees and assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board.

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

## ARTICLE 5

### COMMON AREAS

5.1 Identification. The Project will have Common Areas consisting of portions of the Project intended for the common use of the Owners. The Common Areas will include a private road, shown as the private portion of Thrive Drive, running in an east-west direction (approximately 31 feet wide, curb-to-curb) on the south side of Lots #1 and #2, and on the north side of Lots #11 - #14 (the "**Private Road**"). If the Private Road is not dedicated to and accepted by the City as a public road, then the Association shall be responsible for all costs and expenses reasonably necessary to maintain, repair and (if necessary) replace the Private Road, perform snow-removal services for the Private Road, and to manage the Private Road (including, without limitation, collecting sufficient reserves for the same as

required by the Act). The Common Areas will also include any underground utility service line that services all Affected Lots. Any utility line that solely benefits a single or specific lot or building shall not be included as Common Area. The Common Areas may potentially include a monument sign for the Project, as approved by the City.

5.1.1 No Guaranty of Common Areas. Notwithstanding the foregoing, Declarants shall have no obligation under this Declaration to construct or otherwise install any Common Areas for the Project other than those items, if any, required by the City in connection with the approvals for the Project.

5.1.2 Expanded Snow Removal. If approved by the Board, with the affirmative vote of fifty-one percent (51%) of the total votes in the Association, the Association may hire a snow-removal contractor to perform snow removal services not only for the Private Road, but also for all parking surfaces on all of the Affected Lots. If so approved, the costs and expenses incurred by the Association shall be deemed to be Common Expenses, paid with funds from assessments, even though the snow-removal services will involve parking surfaces that are not Common Areas.

5.2 Use and Enjoyment. Except as provided herein, each Owner shall have a non-exclusive right to use and enjoy the Common Areas. The right of use and enjoyment shall include an access easement to and over all Common Areas. The right to use and enjoy the Common Areas shall be appurtenant to such Owner's ownership of an Affected Lot within the Project and shall immediately transfer upon any conveyance of the Lot.

5.3 Ownership. The Association shall either own the Common Areas or have a permanent easement over, through, and for the Common Areas. Declarants hereby grant and convey the same to the Association. A dedication on the Plat may also effectuate such grant and conveyance.

5.4 Rules to be Adopted by the Board. Notwithstanding the foregoing, the Rules and Regulations adopted by the Board, if any, may include reasonable restrictions on the time, manner, and character of use of the Common Areas by the Owners, their guests, or invitees.

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

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

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

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

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

## ARTICLE 6

### USE LIMITATIONS

6.1 Zoning Compliance. Each Lot shall be used only as allowed by the applicable zoning ordinances and approvals of the City. The Project is intended to be comprised of office, retail, and other commercial uses.

6.2 Compliance with Declaration. Each Owner shall fully comply with, and shall cause such Owner's guests and invitees to fully comply with, the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations adopted by the Board.

6.3 Leasing. The Association may adopt Rules and Regulations governing the leasing of any Building within the Project. Any lease or rental agreement which is entered into in violation of the terms of this Declaration or any applicable Rules and Regulations shall be void. The Association may enforce the terms of this Section as provided in Section 2.5.

6.4 No Further Subdivision. No Lot or Common Area shall be further subdivided, creating additional Lots. Condominium subdivision within a Lot shall be approved. Minor lot line adjustments are acceptable, so long as new lots are not created.

6.5 Prompt Repair. Each Building and other Improvement on an Owner's Lot shall be kept in good repair and attractive condition.

6.6 Nuisances and Offensive, Unsightly, and Unsafe Conditions. No Owner shall permit any noxious, offensive, unsightly, or unsafe activity, object, animal, or condition to exist on such Owner's Lot. Without limiting the generality of the foregoing, no unreasonable noise or disturbance shall be permitted on any Affected Lot. Trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, behind approved fencing or in storage (or otherwise enclosed or screened from view). Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an

enclosed structure or appropriately screened from view. No Owner shall dispose, or permit to be disposed, any oil, gas, toxic or hazardous material, or other unsafe substance within the Project. The Board may adopt reasonable Rules and Regulations to further clarify the responsibilities of Owners under this Section.

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

**ARTICLE 7**

**MAINTENANCE**

7.1 Maintenance by Owner. Each Owner shall maintain such Owner’s Lot, and all permitted Improvements thereon, in good repair and in a clean and tidy manner, and in accordance with the Covenants and the Design Guidelines so as to not detract from the overall appearance of the Project. Each Owner shall maintain such Owner’s Lot and Building at the Owner’s expense without any setoff right. The Board, with the affirmative vote of fifty-one percent (51%) of the total votes in the Association, may adopt reasonable Rules and Regulations governing the appearance and use of Improvements. Without limiting the generality of the foregoing, each Owner shall be fully responsible for maintaining all Improvements on his/her/its Lot in good condition and repair. Each Owner shall also be responsible for the maintenance, repair, and replacement of all utility lines serving such Owner’s Building, provided that no Owner shall do any work or perform any act that will, or may, impair the ability of any utility lines or fixtures to serve other Buildings on other Lots within the Project.

7.2 Maintenance by Association. The Association shall maintain the Common Areas. The Association shall keep Common Areas and other areas for which it is responsible clean, appropriately landscaped, functional, attractive, and generally in good condition and repair consistent with any applicable requirements of the City. In the event that maintenance or repair to Common Areas is caused by the willful or negligent acts of any Owner or group of Owners, or by their guests or invitees, the cost of such maintenance may be assessed solely to the responsible Owner or Owners as a special assessment.

7.3 Effect of Other Agreement. Nothing in this Declaration shall be deemed to amend, modify, or supersede the terms and provisions of that certain Improvement, Reimbursement, and Maintenance Agreement dated \_\_\_\_\_, and recorded with the County Recorder’s Office on \_\_\_\_\_ as Entry No. \_\_\_\_\_.

7.4 Utilities. The Owner of each Lot shall pay for all utility services provided to such Lot.

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

## ARTICLE 8

### EASEMENTS

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

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

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

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

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

9.2.4 Future Utility Easements. Declarants reserve, for themselves and their successors and assigns, an easement, and the right to grant easements to any person, individual, corporate body, or municipality, across, over, under, upon, and through any Affected Lot, Common Area, road, street, open space, or other portion of the Project, for the installation, construction,

maintenance, reconstruction and repair of public, quasi-public, or private utilities and related facilities reasonably necessary to serve the Project and the Affected Lots therein, including but not limited to the mains, conduits, pipelines, laterals, underground or above-ground lines and cables, transmission facilities, meters and other facilities and appurtenances necessary or useful for the provision or management of water, stormwater, storm sewer, sanitary sewer, gas, electricity, telephone, cable television, internet and data and other public, quasi-public or private services or utilities deemed by Declarant necessary or advisable to provide any service to the Project or any Affected Lot, Common Area, or other portion thereof.

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

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

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

## ARTICLE 9

### DECLARANTS' RIGHTS

10.1 Construction Activities. So long as a Declarant owns at least one (1) Affected Lot within the Project, Declarant shall have the right to conduct construction activities on or related to such Lot and shall not be bound by any limitations related to construction activities set forth in this Declaration. Each Declarant shall have a non-exclusive easement and right-of-way in, through, under, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project, construction of one or more Buildings on the Declarant's Lot, and the provision of utility services and other services or facilities to the Project. Notwithstanding any other provision of this Declaration to the



contrary, Declarants shall have the right to construct and install any and all Improvements within the Project or on their Affected Lots, so long as such Improvements comply with the applicable ordinances of the City, but this provision shall not be construed to impose any obligations on Declarants to construct any such Improvements.

10.2 Sales Activities. Notwithstanding any other provision of this Declaration, so long as a Declarant owns at least one (1) Lot within the Project, such Declarant shall have the right to conduct reasonable sales activities including using the same for business purposes and maintaining a reasonable number of “for sale” signs or other similar marketing materials in the Project.

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

## ARTICLE 10

### INSURANCE

11.1 Insurance Held by Owner. Each Owner shall maintain a policy of property insurance on the Building and other Improvements on such Owner’s Lot, protecting such Building and Improvements against casualty and loss, in an amount not less than one hundred percent (100%) of the current replacement value of such Building/Improvements. Each Owner shall also maintain liability insurance for the parking lots and surface improvements on such Owner’s Lot.

11.2 Limitation of Association’s Insurance. The insurance held by the Association pursuant to this Declaration or the Act will not cover any Improvements, Buildings, or personal property of Owners on their Lots.

11.3 Insurance Held by Association. The Association shall obtain and maintain all insurance policies required by Part 4 of the Act for the Private Road (and any other Common Areas) consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be funded by Assessments. Without limiting the foregoing, the Association shall obtain and maintain:

11.3.1 Property and liability insurance for all Common Areas.

11.3.2 Fidelity insurance (e.g., directors and officers coverage) for members of the Board, officers of the Association, and other employees or agents of the Association as the Board deems necessary or appropriate.

11.3.3 Workers compensation insurance for any employees of the Association as required under applicable law.

11.3.4 Such other insurance policies for casualty or liability as the Board deems necessary or desirable and with coverages and coverage limits comparable to similarly situated property owners associations in the general market area of the Project. The Board is not limited to those coverages specifically required or permitted under the Act.

11.4 Association's Right to Negotiate Claims and Losses. Each Owner appoints the Board, or the Board's designee, as attorney-in-fact with respect to negotiating claims and losses covered by any policy held by the Association.

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

## **ARTICLE 11**

### **DURATION AND AMENDMENT**

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

12.2 Amendment. Any amendment to this Declaration shall have no force or effect, and shall not be valid, unless and until it has been approved by sixty-seven percent (67%) of the Members of the Association and recorded in the County Recorder's Office.

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

## **ARTICLE 12**

### **MANDATORY DISPUTE RESOLUTION REQUIREMENTS**

13.1 Statement of Intent. Prior to purchasing an Affected Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Affected Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing an Affected Lot, having received a written warranty if any warranty is provided, and having paid market price for an Affected Lot in the condition it and the Affected Lots and Common Areas are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing an Affected

Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing an Affected Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Article 13. In addition, the Association and the Owners agree that they take ownership and possession of the Affected Lots and Common Areas AS IS, with no warranties of any kind except as maybe provided in writing or as otherwise required as a matter of law. Unless otherwise provided in writing (and then only except to the extent of such writing), the Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 13.3 Pre-Arbitration Requirements.

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

information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

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

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

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

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

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

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

### ARTICLE 13

#### MISCELLANEOUS PROVISIONS

##### 14.1 Mortgagee Provisions.

14.1.1 Owner's Right to Separate Mortgages. Each Owner shall have the right to separately mortgage or otherwise encumber such Owner's Lot. No mortgage by any Owner shall encumber any other Owner's Lot or any portion thereof, including, without limitation, an adjacent Building.

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

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

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

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

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

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

14.2 Notices. The Association shall keep a list of contact information for Owners of all Lots within the Project and all Eligible Mortgagees. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and

email address. Each Owner or Eligible Mortgagee shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Rules and Regulations, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

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

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

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

*[End of Declaration. Signature Page Follows.]*



IN WITNESS WHEREOF, Declarant has executed this Declaration on this 25<sup>TH</sup> day of FEBRUARY, 2020.

**DECLARANTS:**

**Saratoga HC, LLC**, a Utah limited liability company (as a 23.27% tenant-in-common owner of Lot #1)

By: [Signature]  
Name: G. CHAS JOHNSON  
Title: MANAGER

**Lincoln Building LLC**, a Utah limited liability company (as a 76.73% tenant-in-common owner of Lot #1)

By: [Signature]  
Name: JOE GUNTHER  
Title: MANAGER

**Saratoga HC II, LLC**, a Utah limited liability company (as owner of Lot #2)

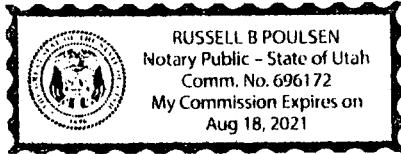
By: [Signature]  
Name: G. CHAS JOHNSON  
Title: MANAGER

[Signature] [Signature]  
Scott McLachlan (as owner of Lots 11-14) Julie Ann McLachlan  
SCOTT COOPER AND JULIE ANN McLACHLAN (AS OWNERS OF LOTS 11-14)

STATE OF UTAH )  
 :SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of FEBRUARY, 2021 by G. CHAS JOHNSON as the MANAGER of Saratoga HC, LLC.

SEAL:

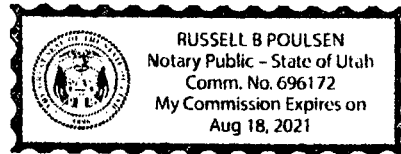


[Signature]  
Notary Public

STATE OF UTAH )  
 :SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of FEBRUARY, 2021 by G. CHAS JOHNSON as the MANAGER of Saratoga HC II, LLC.

SEAL:

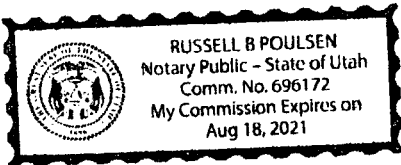


[Signature]  
Notary Public

STATE OF UTAH )  
 :SS.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of FEBRUARY, 2021 by Jon Gunther as the MANAGER of Lincoln Building, LLC.

SEAL:

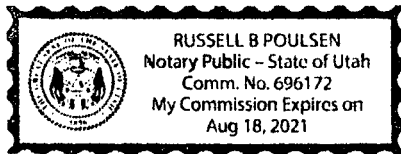


[Signature]  
Notary Public

STATE OF UTAH )  
 :SS.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of FEBRUARY, 2021 by Scott McLachlan AKA SCOTT COOPER McLACHLAN AND JULIE ANN McLACHLAN

SEAL:



[Signature]  
Notary Public

**EXHIBIT A**

**(Description of Affected Lots)**

The Affected Lots against which this Declaration shall be recorded are described as follows:

Lots 1, 2, 11, 12, 13 and 14 of the Riverside Crossing Subdivision, according to the official plat thereof on file and of record with the Utah County Recorder's Office.

The subject parcels are also identified as Utah County Tax Serial Nos. 58:035:0107 (proposed Lot 1); 58:035:0108 (proposed Lot 2); and 58:035:0111 (proposed Lots 11-14)

When Recorded Return To:

Paxton R. Guymon, Esq.  
 York Howell & Guymon  
 10610 South Jordan Gateway, Suite 200  
 South Jordan, Utah 84095

**BYLAWS OF  
 RIVERSIDE CROSSING OWNERS ASSOCIATION, INC.**

ARTICLE I

1.1 Name and Location. The name of the corporation is Riverside Crossing Owners Association, Inc., a Utah nonprofit corporation, hereinafter referred to as the “**Association.**” The principal office of the Association shall be located at 7525 S. UNION PARK AVE #200 MIDVALE, UT 84047 (or at such other location as the Board may designate), but meetings of Owners and Board Members may be held at such other places within or without the State of Utah as may be designated by the Board.

ARTICLE II  
DEFINITIONS

2.1 “**Association**” means Riverside Crossing Owners Association, Inc., a non-profit corporation and its successors and assigns.

2.2 “**Association Act**” means the Community Association Act, Utah Code § 57-8a-101, *et seq.*

2.3 “**Board**” means the Board of Directors of the Association, with all powers as stated in the Declaration, the Articles of Incorporation of the Association, and these Bylaws.

2.4 “**Bylaws**” means these *Bylaws of Riverside Crossing Owners Association, Inc.*, as the same may be amended from time to time in accordance with their terms and provisions.

2.5 “**Declarant**” means the Declarants identified in the Declaration and any successor to whom the rights, privileges, and obligations of the Declarant are assigned.

2.6 “**Declaration**” means the *Declaration of Covenants, Conditions, and Restrictions for Riverside Crossing Subdivision Lots 1, 2, 11, 12, 13 and 14*, filed of record in the Utah County Recorder’s Office, State of Utah, as the Declaration may be amended from time to time in accordance with its terms. These Bylaws shall be recorded against the same Lots encumbered by the Declaration.

2.7 “**Director**” means an individual who is a member of the Board.

2.8 “**Lot**” means the individually subdivided and numbered lots identified on the Plat against which the Declaration is or shall be recorded.

2.9 “**Nonprofit Act**” means the Utah Revised Nonprofit Corporation Act, Utah Code §16-6a-101, *et seq.*, as amended.

All other capitalized terms used herein have the meanings stated elsewhere in these Bylaws or in the Declaration.

ARTICLE III  
MEMBERSHIP IN ASSOCIATION; VOTING; MEETING OF OWNERS

3.1 Membership in Association. Declarant, so long as Declarant owns a Lot, and every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to ownership of any Lot. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If a Lot is owned by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, conveyance or other disposition of a Lot shall constitute a devise, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

3.2 Voting and Percentage Interests. The voting rights and percentage interests appurtenant to each Lot shall be as set forth in Section 3.3 of the Declaration. A change in ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The votes for each Lot must be cast together, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one (1) Owner the vote for the Lot shall be cast as such Owners decide among themselves. In the event such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

3.3 Annual Meeting. Annual meetings of the Association shall be held at a place and time determined by the Board. The Board may change the date of the annual meeting provided it gives reasonable advance notice to all Owners.

3.4 Special Meetings. Special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty-three percent (33%) of all of the total votes of the Association.

3.5 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary / Treasurer or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, or by email, text or other mode of electronic or digital communication, to the extent not prohibited by law, at least ten (10) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address, email address, number for text, or other mode of electronic or digital communication last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, the purpose of the meeting. The President of the Association will chair meetings of the Owners. The presence of an Owner at a meeting

shall be deemed to waive any objection such Owner has to the form and scope of the notice unless such Owner objects at the outset of the meeting.

3.6 Quorum. Except for meetings addressing an amendment of these Bylaws, an amendment of the Declaration, or other matters for which the affirmative votes of a certain percentage of Owners is required for approval, the Owners present in person or by proxy at a meeting of the Association shall constitute a quorum. Where a certain percentage of affirmative votes of Owners is required to approve an action and such action is to be discussed at the meeting, a quorum shall consist of not less than the number of affirmative votes required to approve such action.

3.7 Proxies. At all meetings of the Association, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary / Treasurer or any professional manager the Association chooses to retain. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his or her Lot.

#### ARTICLE IV BOARD; SELECTION; TERM OF OFFICE

4.1 Number, Selection and Tenure. The Association will have not less than three (3) and not more than seven (7) Directors. Initially, the Board will have three (3) Directors who will be selected by the Declarant. The Declarant shall decide who serves on the Board during the Period of Declarant's Control and may increase the number of Directors. After the Period of Declarant's Control, the Board will consist of seven (7) Directors. Within ninety (90) days after the end of the Period of Declarant's Control, the Association shall hold an election at which the Owners shall be entitled to elect all seven (7) Directors. Upon such election, the terms of the Directors will be staggered as follows: the two (2) Directors receiving the highest number of votes in such election shall serve for an initial term of three (3) years; the three (3) Directors receiving the next highest number of votes shall serve for an initial term of two (2) years; and the two (2) Directors receiving the next highest number of votes shall serve for an initial term of one (1) year. After the expiration of the initial terms, all Directors shall serve terms of two (2) years. After the Period of Declarant's Control, the Board may change the number of Directors on the Board by the vote of a majority of Directors. In addition, after the Period of Declarant's control the Owners may change the number of Directors by the vote of a majority of Owners. Notwithstanding the foregoing, there shall always be an odd number of Director slots and the terms of the Directors shall be staggered. Notwithstanding the foregoing, Declarant may, at Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Period of Declarant's Control. Such action shall not be deemed as a termination of the Period of Declarant's Control or a waiver of any of the rights of Declarant as provided herein.

4.2 Removal and Replacement. A Director may be removed with or without cause by a majority vote of the other Directors or by a majority vote of the Owners at a meeting of the Owners called for the purpose of voting on removal. If a Director is removed, the remaining Directors (provided there are at least two (2) Directors serving) shall determine a replacement Director to fill the remainder of the term of the removed Director. If the Board cannot determine a replacement, or if there are not two (2) directors then serving, the Owners shall fill vacancies on the Board at a meeting called for the purpose of filling vacancies.

4.3 Indemnification. In the event that any legal claim or action is asserted or commenced against a Director or Officer for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the

Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless it a court of competent jurisdiction determines that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such determination, the Association is no longer liable for the cost of defense and may recover costs already expended from the Director or Officer who so acted.

## ARTICLE V MEETINGS OF THE BOARD OF DIRECTORS

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

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than five (5) days written notice to each Director.

5.3 Open Meetings. After the Period of Declarant's Control, meetings of the Board shall be open to the Owners or Owners' agents except in cases where the Nonprofit Act permits private meetings. After the Period of Declarant's Control, any Owner may request notice of all meetings of the Board, in which case the Board shall provide notice of all meetings to such Owner not less than 48 hours prior to such meeting.

5.3 Quorum and Voting. A majority of the number of Directors shall constitute a quorum for the transaction of business. During the Period of Declarant's Control, all matters requiring a vote of the Directors or otherwise submitted to a vote of the Directors shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all matters submitted to a vote of the Directors shall be decided by the votes of the Directors. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board and of the Association.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACTS

6.1 Powers. The Board shall have power to:

6.1.1 Adopt and publish Rules and Regulations governing the use of the common areas within the Project or as shown on the Plat or identified in the Declaration ("Common Areas"), and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

6.1.2 Adopt and publish other Rules and Regulations for the management of the Association as are not in conflict with the Association Act, the Declaration, or these Bylaws.

6.1.3 As the Board deems necessary, employ a professional manager, or other independent contractors or employees, to carry out the functions of the Association and exercise the powers of the Board which are properly the subject of delegation; and

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

delegated to the Association by the Association Act, the Declaration, or the Articles of Incorporation.

6.2 Duties. It shall be the duty of the Board to:

6.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote thirty-three percent (33%) of the total votes;

6.2.2 Supervise any professional manager and all Officers, agents and employees of this Association, and to see that their duties are properly performed;

6.2.3 Do each of the following in the manner set forth in the Declaration:

6.2.3.1 Prepare the budget for the Association as provided in the Declaration and these Bylaws;

6.2.3.2 Fix the amount of the annual assessment assessed against each Lot and fix the amount of any supplemental assessments or special assessments applicable to any Lots;

6.2.4 Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each supplemental assessment or special assessment; and

6.2.5 Foreclose the lien (at the option of the Board) against any Lot for which assessments are not paid in the manner provided for in the Association Act and the Declaration or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same;

6.2.6 Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid and to charge a reasonable fee for the issuance of these certificates;

6.2.7 Procure and maintain insurance as required by the Declaration and the provisions of the Association Act relating to insurance;

6.2.8 Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions of the Association Act relating to reserve funds;

6.2.9 Cause all Officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate; and

6.2.10 Cause the Common Areas to be properly maintained and managed.

6.3 Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against Declarant, the individual managers, owners, members, or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the



Building(s) thereon unless and until all of the “MANDATORY DISPUTE RESOLUTION REQUIREMENTS” set forth in the Declaration have been satisfied.

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

6.5 Applicability of the Nonprofit Act. The provisions of the Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise provided in these Bylaws, the Declaration, or the Articles of Incorporation.

## ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The following positions shall constitute the officers of this Association (“**Officers**”): a President, a Vice-President, a Secretary / Treasurer, and such other Officers as the Board may from time to time by resolution create.

7.2 Selection of Officers. The Declarant shall select the three (3) initial Officers, and the Declarant shall decide who serves as Officers during the Period of Declarant’s Control. After the Period of Declarant’s Control, the Board shall annually, at the next meeting of the Board after the Association’s annual meeting, select the Officers. After the Period of Declarant’s Control, all Officers shall be members of the Board.

7.3 Term. After the Period of Declarant’s Control, the Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

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

7.5 Resignation and Removal. After the Period of Declarant’s control, any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary / Treasurer. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.6 Vacancies. After the Period of Declarant’s Control, a vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

7.7 Multiple Offices. Members of the Board may be Officers in the Association. No person shall simultaneously hold more than one (1) of any of the offices identified above, except in the case of special Officers created pursuant to Section 7.4, above.

7.8 Duties of Officers. The duties of the Officers are as follows:

7.8.1 President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all written contracts or

agreements of the Association. The President shall execute any amendments to the Declaration and deliver the same to the Secretary / Treasurer for certification and recordation, provided approval for such amendment has been obtained as provided in the Declaration.

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

7.8.3 Secretary / Treasurer. The Secretary / Treasurer shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; certify that any amendments to the Declaration have received the required approval and have been executed by the President and shall record the same; and shall perform such other duties as required by the Board. The Secretary / Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep the Associations book and accounts; and shall assist the Board with the preparation of the annual budget to be presented to the Owners as provided herein.

ARTICLE VIII  
COMMITTEES

8.1 Committees Authorized. The Board may appoint Committees (such as an ACC as defined in the Declaration) as it deems appropriate for carrying out the purposes of the Association.

ARTICLE IX  
BOOKS AND RECORDS

9.1 Open Records. Notwithstanding Section 6.2.1, above, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation, the Bylaws, and any Rules and Regulations promulgated by the Board shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE X  
BUDGET AND ASSESSMENTS

10.1 Budget. The Board shall prepare an annual budget showing the estimated expenses of the Association and the anticipated annual assessment for the following year attributable to each Lot. The budget shall be completed and distributed to the Owners on or before December 1 of each year.

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

10.3 Payment of Assessments. As more fully set forth in the Declaration, and subject to the exemptions set forth in the Declaration, each Owner is obligated to pay to the Association all assessments, and the Owner's obligation to pay such assessments is secured by a continuing lien upon the Owner's Lot. Any assessment which is not paid when due is delinquent. If the assessment is not paid on time, then the Board has the authority to establish late fees and collect the same from the delinquent Owner. The Board, in the name of the Association, may bring an action at law against the Owner

personally obligated to pay the assessments and late fees or foreclose the lien against the Lot in the manner provided by the Association Act, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Areas or abandonment of his or her Lot.

10.4 Set-up Fee. In addition to the assessments identified in the Declaration, the Association may charge an administrative set-up fee whenever a new Owner takes title to a Lot. The amount of any set-up fee will be determined by the Board in accordance with these Bylaws and may be adjusted by the Board from time to time. The set-up fee will be used to offset the administrative, data entry, and recordkeeping costs associated with the change of ownership from one Owner to another.

ARTICLE XI  
AMENDMENTS

11.1 Amendment. Any amendment to these Bylaws is not valid or effective unless and until it has been approved by sixty-seven percent (67%) of total voting interests of the Association; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction.

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


ARTICLE XII  
MISCELLANEOUS

12.1 Governing Law. These Bylaws shall be governed by, and interpreted in accordance with, the laws of the State of Utah.

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

12.3 No Waiver. The failure by the Declarant or the Association to enforce any term or provision of these Bylaws shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

ADOPTED BY BOARD MEMBERS OF THE ASSOCIATION this 11<sup>th</sup> day of MARCH, 2020, and in witness of the same have been executed by an authorized director of the Association.

Signature: 

Printed Name: G. CURRISON

Title: Director