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DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR

JUNIPER BEND
(PLAT S)

IN

Herriman City, Utah

"This is a Multi-Generational Community"

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

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

Juniper Bend, PLAT S, Rosecrest

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Rosecrest Communities, Plat S (Juniper Bend) (the “**Declaration**”) is adopted by the Juniper Bend at Rosecrest HOA, Inc. (the “**Association**”) and is effective as of the date it is recorded in the Salt Lake County Recorder’s Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
- B. An initial plat related to development of **Rosecrest Plat S-Juniper Bend** was recorded **12-13-2016, in Salt Lake County, Book 2016P Page 329.**

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the Terms and Conditions set forth below, the Association hereby adopts this Declaration of Covenants, Conditions and Restrictions for Rosecrest Communities, Plat S-Juniper Bend.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 “**Act**” shall mean the Community Association Act codified beginning at Utah Code § 57-8a-101 *et seq.*, in effect at the time this Declaration is recorded, and as such may be amended from time to time.
- 1.2 “**Allocated Interest**” shall mean the interest of that Owner which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. Each Lot shall have an equal Allocated Interest.
- 1.3 “**Articles**” shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 “**Assessment**” shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.5 “**Association**” shall refer to the Juniper Bend at ROSECREST, INC., the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.6 “**Board Member**” shall mean a duly-qualified and elected or appointed member of the Board of Directors.

- 1.7 **“Board of Directors” or “Board”** shall mean the entity with primary authority to manage the affairs of the Association.
- 1.8 **“Bylaws”** shall mean the bylaws of the Association attached as Exhibit B and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.9 **“Common Area”** shall, unless otherwise more specifically provided in this Declaration, mean the common area within the Project as reflected on the recorded Plats of the Association, and any improvements thereon, and specifically including, but not necessarily limited to: (a) the open space lots, (b) all trails, fences, sidewalks, streetlights, parking areas, or other improvements located within the designated common areas on the plats, (c) the clubhouse and swimming pool, (d) all Limited Common Areas, and (e) all other parts of the Project outside of the Lots not dedicated to the public or which are necessary or convenient to the Project’s existence, maintenance, safety, or normally in common use. In accordance with the Plat, the Common Areas and facilities are owned by the Association.
- 1.10 **“Common Expenses”** shall mean the actual and estimated costs incurred for the general benefit of all Owners including: (a) maintenance, management, operation, repair, and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Lots which are maintained by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) extermination, security, gardening, common utilities, and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.11 **“Control Period”** shall mean the period of time when the Declarant owns one or more Lots and retains the right to appoint Board Members and exercise other specific Declarant rights as set forth herein.
- 1.12 **“Declarant”** shall mean Rosecrest Communities, LLC., a Utah Limited Liability Company, or one of its successors or assigns provided such successor or assign is designated as the Declarant by the immediately preceding Declarant. The Declarant may assign all or part of its rights hereunder.
- 1.13 **“Declaration”** shall mean this Declaration of Covenants, Conditions and Restrictions for Rosecrest Communities, Plat S (Juniper Bend), including all attached exhibits, which are incorporated by reference, and any and all amendments to this Declaration.
- 1.14 **“Design Guidelines”** shall mean those requirements governing the site location and architectural design of Dwellings and other structures and improvements within the Project.
- 1.15 **“Design Review Committee”** shall mean the Rosecrest Communities, Design Review Committee (R D R C) as set forth herein.
- 1.16 **“Dwelling”** shall mean the single family residence built or to be built on any Lot, including the attached garage.

- 1.17 **“Electronic Transmission”** or **“Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.18 **“Governing Documents”** shall mean and refer to the Declaration, the Plat, the Bylaws, the Rules, the Articles, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project.
- 1.19 **“Landscaping”** shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants and like improvements located within the Project, as well as the appurtenant sprinkling and irrigation systems.
- 1.20 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Lot.
- 1.21 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Lots to the exclusion of other Owners. Conveyance of a Lot includes the use of the Limited Common Area designated for the use of the Owner of the Lot.
- 1.22 **“Lot”** shall mean any numbered building lot shown on the Plat.
- 1.23 **“Manager”** shall mean any entity or Person engaged by the Board of Directors to manage the Project.
- 1.24 **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling on the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.25 **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the County Recorder of Salt Lake County, Utah; however, Owner shall not include a trustee for a deed of trust.
- 1.26 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.27 **“Plat”** shall mean, and refer collectively to all of the record of survey maps of Rosecrest Communities Plat S (Juniper Bend), recorded in the records of the Salt Lake County Recorder and all amendments and supplements thereto.
- 1.28 **“Project”** shall mean the Property and all land, structures, and improvements thereon including the Lots, Common Areas, and Limited Common Areas.
- 1.29 **“Property”** shall mean the property legally described and identified in Exhibit A and all easements and rights appurtenant thereto.
- 1.30 **“Rules”** shall mean and refer to the rules and regulations adopted by the Association.
- 1.31 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.32 **“Lot/Unit Committee”** shall mean the Committee appointed by the Board to determine maintenance requirements and to calculate annual budgets for the Common Areas

appurtenant to the lots or units.

ARTICLE 2: THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Project and declares and agrees that the Project and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project is a residential subdivision consisting of Single Family Lots which may contain a separate home, open space lots, and a clubhouse and pool. The Project includes roadways, parking areas, and open space. The Project is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named "Rosecrest Communities Plat S (Juniper Bend) and is located entirely in Herriman City, Salt Lake County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 **Identification of Lots.** All of the Lots are referenced specifically and identified by location on the Plat.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.6 **Expansion of Project.** The Project may be expanded by the Declarant.

ARTICLE 3: LOTS, COMMON AREA, & ALLOCATED INTERESTS

- 3.1 **The Single Family Lots.** Each Single Family Lot is identified on the Plat by a distinct Lot number that identifies the Single Family Lot.
- (a) Subject to further specification herein, each Single Family Lot generally consists of any and all improvements on or within the boundary of the Single Family Lot and all structures and related equipment or installation on or within the boundary of the Single Family Lot, including but not limited to:
- (1) The Dwelling constructed on a Single Family Lot and components thereof, in or on the boundary of any Single Family Lot are part of the Single Family Lot.
 - (2) All garages, sheds, or other approved structures attached to or located adjacent

to a Dwelling shall be part of the Single Family Lot.

- (3) All pipes, wires, conduits, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Single Family Lot or servicing only the Single Family Lot shall be part of the Single Family Lot.
- (4) The driveway, any fence, and any yard area on the Single Family Lot, as identified on the Plat, are part of the Single Family Lot.

3.2 **Limited Common Area.** The Limited Common Area shall consist of areas identified on the Plat as Limited Common.

- (a) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot where so identified and may not be severed from the ownership of the Lot.
- (b) Any awnings, porches, balconies, patios, decks, or other apparatus intended to serve a Single Family Lot, but located outside the boundaries of the Lot, shall constitute a Limited Common Area pertaining to that Lot exclusively.
- (c) Should it be unclear from the Plat or this Declaration if a particular area is Common Area or Limited Common Area, the Board of Directors shall have absolute authority in determining the proper designation of that area.

3.3 **Common Area.** Common Area shall, unless otherwise more specifically provided in this Declaration, mean the real property for the common use and enjoyment of the Owners and shall specifically include, but not be limited to, the following:

- (A) All Common Areas designated as such on the Plat including any area designated as a Common Area or open space;
- (B) All utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use of all Lot Owners or for the Common Area;
- (C) The open space lots;
- (D) The trails, fences, sidewalks, streetlights, entry features, neighborhood parks, landscaping, common parking areas, and other amenities not dedicated to the County;
- (F) The clubhouse, pool, and appurtenant parking lot;
- (G) All roads, streets, lanes, and cul-de-sacs within the Project not dedicated to a municipality; and
- (H) All other parts of the Project necessary or convenient to its existence, maintenance, safety, or normally in common use.

3.4 **No Severance of Common Area.** The right to and interest in the Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot.

3.5 **Allocated Interest of Each Lot in the Votes of the Association.** Each Lot is entitled to a voice equal to its Allocated Interest for all matters related to the Association that Owners are

permitted or required to vote or approve, and such votes shall be cast in accordance with the Bylaws. Each Lot shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Lot shall not be a reason to alter or change any Allocated Interest.

3.6 **Declarant Voting Rights.** Notwithstanding Section 3.6 above, the Declarant shall be entitled to twenty-five (25) votes for each Lot the Declarant owns in the Project for all matters in which members are entitled to vote.

3.7 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein, are hereby incorporated into and made a part of this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

ARTICLE 4: MAINTENANCE & MODIFICATION

4.1. **Owner Responsibility for Maintenance of Lots.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of the following:

(a) Single Family Lots (8400 SF or larger size lots).

- (1) Any Dwelling, structure, fence, retaining walls, driveway, sidewalk, and any and all improvements thereof.
- (2) Owners of the Single Family Lots sharing a common fence shall equally pay for the maintenance, repair, and replacement of such fence.
- (3) Owners are responsible for the removal of snow from the driveways and walkways to and from the home within or appurtenant to the Owner's Lot. The Sidewalks and Roads will be the responsibility of the HOA.
- (4) Owners shall be responsible for keeping the Single Family Lot, and all porches, patios, driveways, rear yard areas, and other exterior areas of a Lot in a clean and sanitary condition, free of pests and rodents, and in good condition.
- (5) The Board may adopt a standard of maintenance for any area which is the responsibility of the Owner, including landscape maintenance, and shall set forth such standard in the Rules.
- (6) The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, installed, or placed on the exterior of any Lot, which may include a prohibition on leaving, installing, or storing any items or animals in such places.

(b) Single Family Lots (8399 SF or smaller size lots).

- (1) Any Dwelling, structure, fence, driveway, sidewalk, and any and all improvements thereof.
- (2) Owners are responsible for the removal of snow from the driveways and walkways to and from the home within or appurtenant to the Owner's Lot. The Sidewalks and Roads will be the responsibility of the Association.

- (3) Owners shall be responsible for keeping the Single Family Lot, and all porches, patios, driveways, rear yard areas, and other exterior areas of a Lot in a clean and sanitary condition, free of pests and rodents, and in good condition.
- (4) The Association will provide the mowing and trimming of the Landscaped areas of the lots. The maintenance of the water sprinkler system and the timing of water will be the responsibility of the home owner. Maintenance of any planter boxes, shrub or flower areas of the lot will be the Owners responsibility. The Board may adopt a standard of maintenance for any area which is the responsibility of the Owner, including landscape maintenance, and shall set forth such standard in the Rules.
- (5) The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, installed, or placed on the exterior of any Lot, which may include a prohibition on leaving, installing, or storing any items or animals in such places.
- (6) All sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within the boundaries of a Lot will be the Owners responsibility.

4.2. **Maintenance of Common Area.**

- (a) Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.

The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the Common Areas, including the following: (i) the lawn, trees, shrubs, and other plants within the Common Areas, (ii) the fences, sidewalks, trails, and parking areas, and (iii) any Common Area streets and streetlights. Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall not be obligated to maintain any utility or utility system or component which is maintained by any municipality.

- (b) **Snow Removal.** The Association shall take reasonable efforts to remove snow from roads, sidewalks, parking lots, and driveways in the Project as necessary to allow vehicle and pedestrian access. Owners shall be responsible for removing snow from any limited common area porches, decks, and walkways and driveways if they so desire. In the discretion of the Board, the Association may provide more snow removal services for the removal of snow

otherwise allocated to the Owners in this Declaration.

- (d) **Standard of Maintenance.** The Board may determine, in its sole discretion, the appropriate maintenance standard for the Common Area, so long as those areas are maintained in the best interests of the Owners.
- (e) **Assessment of Maintenance Expenses to Specific Owner.** If the need for maintenance or repair is caused by an Owner or an Occupant, the Association shall assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.
- (g) **Right to Sell or Transfer Common Area.** The Board may sell or transfer Common Area only with approval of sixty-seven percent (67%) of the Allocated Interests.

4.3 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Lot as required in the Governing Documents or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of at least thirty (30) days or a greater length of time if determined by the Board. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.

4.4 **Modifications to Lots and Architectural Review.** Without the prior approval of the Association and RDRC, an Owner may not (1) install or build any new structure, fence, or Dwelling;; and (2) install or alter any new or existing exterior feature such as a driveway, walkway, landscaping or anything else that alters the exterior appearance of the Lot.

This provision is intended to be read as broadly as possible to require approval before any exterior work to a Lot, including changes to landscaping. Notwithstanding anything to the contrary herein, prior to turnover, the Declarant shall have sole authority and responsibility to approve the plans for the initial construction of a Dwelling and initial landscape of each Lot.

(a) **Design Review Committee.**

- (1) The Design Review Committee is the Rosecrest Design Review Committee (RDRC) as established the Roscrest Communities Master Association.
- (2) The RDRC may choose to delegate its review authority to a committee established by the Association. In that event a Design Review Committee (“DRC”) may be appointed by the Board. Such committee shall consist of at least three (3) members, but may include more members at the discretion of the Board. The DRC need not be composed of Owners. The DRC shall be a Sub-Committee as defined in the Bylaws, and shall act in accordance with the requirements of Sub-Committees. The DRC shall have the Board’s right of entry to verify compliance with this section. Members of the DRC shall serve for a term of one (1) year, and may serve for consecutive terms of service as appointed by the Board. Any vacancy on the Committee may be filled by

the Board to serve the remainder of the term of the originally appointed member(s). The Committee may act even though a vacancy has not been filled. Any member of the DRC may be removed at any time by the Board with or without cause. The Board need not appoint a Design Review Committee. If no such committee is appointed, the Board shall have all powers of the DRC and may act in all ways and have all powers otherwise given to the DRC.

- (4) The RDRC shall serve as an architectural review board and shall regulate the external design, appearance, and location of any structure on any Lot so as to enforce the architectural provisions of the Declaration or Design Guidelines as may be adopted by the Board.

(b) Submission of Plans to Design Review Committee for Approval.

- (1) No structure of any kind whatsoever shall be erected, placed, moved onto, or commenced without the prior written approval of the DRC. The Board may adopt Rules relating to the submission of plans and specifications. Unless and until the Board adopts such Rules, an Owner must submit such plans and specifications as the DRC may reasonably require, but shall in all cases include the following:

- (i) A complete set of plans and specifications;
- (ii) A site plan showing the location of all proposed and existing structures on the Lot;
- (iii) Exterior elevations for the proposed structures;
- (iv) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures; and
- (v) Description of the plans and provisions for landscaping and grading.

- (2) No exterior remodels, additions, or major modifications to the Lot or exterior of the Dwelling whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the DRC. By way of illustration, but not of limitation, the following are considered remodels, additions, or major modifications: painting the exterior of the Dwelling or any structure a new color, excavation, additions of new rooms to a structure, solar collectors or panels, changing the exterior material of a structure, installing a fence, or any other work that significantly alters the appearance of the Lot or Dwelling. The DRC may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the DRC. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. The Board may adopt Rules relating to obtaining such prior written approval. Unless and until the Board adopts such Rules, the following provisions shall apply: an Owner must submit such plans and specifications as the DRC reasonably may require, including any of the specific documents included in Section 4.4(b)(1)(i)-(v) that may be requested by the DRC.

- (3) No approval is required for interior modifications that do not affect the exterior of the building, although the Board may still adopt Rules relating to the use of Common Area or roadways for staging and other construction needs.

- (4) An Owner may complete any maintenance to the exterior of a Dwelling or other approved structure on a Lot, to the extent that such maintenance obligation is the responsibility of the Owner, if such maintenance will not change the appearance of the already-built Dwelling or structure.
 - (c) Failure of Design Review Committee to Act. If the DRC, or Board if no DRC has been established, shall fail to act upon any written request submitted to it within thirty (30) days after a complete submission of documents in a form acceptable to the DRC, such request shall be deemed to have been approved as submitted, and no further action shall be required.
 - (d) Design Guidelines. The Rosecrest Design Review Committee shall enforce the Design Guidelines. Design Guidelines include but are not limited to restrictions on: minimum and maximum square footage, building height, exterior siding materials, roofing materials, fencing and landscaping. In the event that the Board does not adopt Design Guidelines, the following restrictions shall apply:
 - (e) Expenses of Design Review Committee. The DRC may charge reasonable fees for the processing of any request, plans, or specifications including consultation with a professional. The Association shall pay any ordinary or reasonable expense of the architectural review.
- 4.5 **Utilities.** All utilities will be metered separately to each Lot and such utility charges shall be the responsibility of the Owner.

ARTICLE 5: ORGANIZATION & GOVERNANCE OF ASSOCIATION

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 5.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.
- 5.5 **Availability of Documents.** The Association shall make available to the Owners, Lenders,

and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records, and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper written request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board of Directors determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

5.6 **Board of Directors or Board.** The governing body of the Association shall be the Board of Directors appointed by the Declarant during the Control Period, or elected or appointed pursuant to the Bylaws upon the expiration of the Control Period. After the Control Period ends, the Board of Directors shall consist of five (5) members elected by the members of the Association. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board of Directors shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Association. The Board may retain professionals, including, without limitation, attorneys, accountants, and bookkeepers to assist in any Board function.

5.7 **Board Member Qualification.** Unless otherwise set forth in the Bylaws, to be on the Board of Directors, a Person must be an Owner or the spouse of an Owner and over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Directors.

(a) **Reasonable Ongoing Requirements for Board Members.** The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board of Directors, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members.

(b) **Non-applicability during Declarant Control Period.** Notwithstanding anything to the contrary in this Section, the Declarant shall not be bound by qualifications and requirements for Board Members and shall have the right to appoint and remove all Board members during the Declarant Control Period pursuant to Section 22 herein.

5.8 **Limitation on Authority of Owners, Board Members, Officers, & the Board.**

(a) Except as provided herein or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to and may not act on behalf of the Association or the Board of Directors to:

- (1) Amend or terminate any Governing Document;
- (2) Elect or remove members of the Board of Directors;
- (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board Members or of the Board of Directors; or
- (4) Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

5.9 **No Reliance on Actions Contrary to Governing Documents.** No one may rely upon any authorization (from the Board of Directors or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel, waiver, or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Lot in the Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

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

ARTICLE 6: GENERAL RIGHTS & RESPONSIBILITIES OF THE ASSOCIATION

6.1 **Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided by law.

6.2 **Maintenance.** The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the Project, in accordance with the general purposes specified in this Declaration.

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

- (a) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
- (b) Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding at least thirty percent (30%) of the Allocated Interest and must be approved of by the Board. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Lot shall be permitted without the written consent of all directly affected Owners and the

written consent of Owners holding fifty percent (50%) of Allocated Interest in the Association.

- 6.4 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.
- 6.5 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 6.6 **Entering Lots.** After having given the appropriate notice as required in Article 17, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Lot to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
- 6.7 **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 6.8 **Hiring Managers and Delegating Responsibilities.** The Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE BOARD OF DIRECTORS HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- 6.9 **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- 6.10 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) suspend Owners' rights to utilize the amenities within the Project including, but not limited to the pool; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 6.11 **Discretion in Enforcement.**
- (a) Subject to the discretion afforded in this section, the Board shall uniformly and

consistently enforce and implement the Terms and Conditions in the Governing Documents.

- (b) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Association, and (2) whether to pursue a claim for an unpaid Assessment.
- (c) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (d) Subject to Subsection (e), if the Board decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
- (e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

6.12 **Reserve Fund.** The Association may maintain a reserve fund and shall obtain and update a Reserve Analysis as required in this Declaration and the Act.

6.13 **Conflicts with Service Providers and Vendors.** The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any Board Member; (2) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (3) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (4) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. A relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include Managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

6.14 **Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board of Directors shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents and in any such process shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board of Directors may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two weeks' notice of the

hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue. The Board may rely on any reasonable information and evidence in determining whether or not a violation of the Rules has occurred both initially and after a hearing.

- 6.15 **Bulk Services Agreements.** The Association shall have the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.
- 6.16 **Review and Audit of Association Finances.** The Association may have an independent accountant conduct a review of the Association's finances. The Association shall make any such review available to the Owners. Any Owner may have an audit or review conducted of the Association's records by a CPA, at that Owner's expense, and the Association shall cooperate in providing access to any records needed for that audit or review. Upon receipt of a request signed by owners holding forty percent (40%) of the Allocated Interests, the Committee shall have an audit conducted of the Association's finances by a CPA and shall make the audit available to the Owners.
- 6.17 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting at least once a year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- 6.18 **Project Air Space, Drones, and Unmanned Aircraft.** The Association shall have the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property. The Association shall also have the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property and (2) in any airspace within 1,000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Project's airspace shall not subject the Association to liability for damages to persons or property relating to the operation of such a device. Any Owner or tenant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device and (2) indemnify and defend the Association, its manager, and all officers and directors (past or present), from any claims related to the device. The Association shall have the power to establish Rules implementing this section and such Rules may include, and are not limited to, the following: (1) requiring Owners to provide information about and/or photographs of the device to the Association, (2) requiring flying devices to be marked with the Owner's name or other information, (3) establishing certain areas, hours, minimum or maximum height limitations, or banning flying of devices completely, (4) banning altogether or designating required commercial drone delivery landing sites, and (5) any other reasonable Rules related to the flying of devices.
- 6.19 **Reinvestment Fee Covenant upon Sale or Transfer of Lot.** The Board may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a

“Reinvestment Fee”) as provided for in Utah Code Ann. § 57-1-46 in an amount of two-hundred and fifty dollars (\$250), including any Dwellings constructed thereon, at the time of the transfer. A transfer is any change in the ownership of the Lot as reflected in the office of the county recorder, regardless of whether it is pursuant to the a sale of the Lot or not. This reinvestment fee covenant may not be enforced against: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (5) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed two hundred fifty dollars (\$250.00) or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents, , and (2) other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

ARTICLE 7: BUDGETS & ASSESSMENTS

- 7.1 **Purpose of Assessments.** Money collected by the Association shall be used for: the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 **Budget.**
- (a) The Board of Directors is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Board of Directors may revise that budget from time to time as the Board deems appropriate.
 - (b) The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board of Directors deems appropriate.
 - (c) The budget shall track and estimate Single Family Maintenance Expenses in separate sub-categories within the total Common Expenses in order to allocate these expenses as set forth in Section 7.7 below.
 - (1) Single Family Maintenance Expenses shall mean and include those actual and estimated expenses incurred or to be incurred by the Association for the benefit of those Single Family Lots that have elected for the Association to perform additional maintenance and repair services on those Lots that are not required to be performed under this Declaration.
 - (d) The Board of Directors shall present a copy of the budget to Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.

- (e) The Board of Directors shall determine the amount of the Regular Assessments to be paid by the Owners of each Lot by multiplying the total budgeted amount by the Allocated Interest for each Lot.
 - (f) Owners may disapprove a proposed budget pursuant to the terms of Section 57-8a-215 of the Act.
- 7.3 **Payment of Assessments.** Unless otherwise established by the Board of Directors and communicated to each Owner, each Owner shall pay to the Association the Owner's Regular Assessment and any applicable Townhome Assessment or Single Family Maintenance Assessment in equal monthly installments.
- 7.4 **Adjustments to Assessments.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet Common Expenses, Townhome Expenses, or Single Family Maintenance Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board of Directors, each Owner shall thereafter pay to the Association the Owner's adjusted Assessment.
- 7.5 **Personal Obligation for Assessment.** Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs, and attorney fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due.
- 7.6 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board of Directors.
- 7.7 **Calculation and Allocation of Assessments.** Assessments shall be allocated to Owners as follows:
- (a) **Regular Assessment.** The Regular Assessment shall be paid by all Lots within the Project that are subject to assessment. The Regular Assessment shall be computed by subtracting the Townhome Expenses and Single Family Maintenance Expenses from the total Common Expenses of the Association and then allocating this figure to all Lots subject to assessment based on the Allocated Interest of each Lot.
 - (b) **Single Family Maintenance Assessment.** The Single Family Maintenance Assessment shall only be paid by the Owners of those Single Family Lots who have contracted with the Association for certain landscaping and other maintenance services on their Lot. There is no requirement that Single Family Maintenance Assessments be uniform. The Board shall have the sole and absolute discretion to allocate these Assessments to each Single Family Lot in any manner they deem appropriate based on the services performed and expenses incurred on each Lot. At no time shall Single Family Maintenance Expenses be charged or allocated to non-participating Single Family Lots or Townhome Lots.

- 7.8 **Rate of Assessment.** Assessments for Lots in which the construction of a Dwelling has been commenced or completed shall be fixed at a uniform rate based on each Lot's Allocated Interest. The rate for Lots owned by a party other than the Declarant which construction of a Dwelling has not been commenced shall equal two-thirds (2/3) of the uniform rate set for Lots upon which construction has been commenced. Regardless of whether a Dwelling has been constructed or not, no Lot(s) owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments.
- 7.9 **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Statement described in Section 7.10 below) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.10 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. For any valid request, and upon payment of a fee of not more than twenty-five dollars (\$25.00), the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.11 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The Association may set forth the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah Code § 57-8a-106 as amended. Within five business days of any complete payoff information request, the Association shall provide assessment payoff information needed for the closing. A request for payoff information needed for a closing must: (1) be conveyed in writing; (2) be conveyed to the primary contact person designated by the Association with the Association's registration with the Utah Department of Commerce; (3) contain (i) the name, telephone number, and address of the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information; (4) be accompanied by a written consent for the release of the payoff information: (i) identifying the person requesting the information as a person to whom the payoff information may be released, and (ii) signed and dated by an owner of the Lot for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.12 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect Special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a Special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

- 7.13 **Special Assessments to Individual Lot.** Special Assessments may be levied by the Association against a particular Lot and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner's Lot or Dwelling into compliance with the provisions of the Governing Documents;
 - (b) Fines, late fees, collection charges, and interest;
 - (c) Any other charge designated as pertaining to an individual Lot in the Governing Documents; and
 - (d) Attorney fees, costs, and other expenses relating to any of the above.
- 7.14 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Board of Directors.
- 7.15 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Lot in the Common Expenses of the Project, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.16 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amounts by Owners shall be permitted for any reason, including, without limitation, a claim that the Board of Directors is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.17 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest (or oldest) charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.18 **Loans.** Upon approval of Owners holding more than thirty percent (30%) of the Allocated Interests by vote at a meeting called for that purpose, the Association may borrow money and may provide such security as necessary for the loan, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Lot shall be security for any loan to the Association without that Owners' consent.

ARTICLE 8: NONPAYMENT OF ASSESSMENTS & LIABILITY

- 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article.
- 8.2 **Collection Charges and Interest.** If the Association does not otherwise adopt or establish

billing and collection procedures in the Rules, the following shall apply: Assessments shall be due and payable thirty (30) days after the invoice date and shall be considered late if not received within ten (10) days of the due date. Payments received after ten (10) days from the due date may be charged an initial late fee of thirty-five dollars (\$35.00). In addition to late fees, interest may accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at one and one-half percent (1.5%) per month. The Association may also assess to the Owner a collection charge, late fee, and any other reasonable charge charged by a Manager related to collections.

- 8.3 **Joint and Several Liability of Owner and Future Owners.** The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Lot.
- 8.4 **Lien.** The Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, attorney fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien for fines shall arise when (1) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (2) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over every other lien and encumbrance on a Lot except only: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.
- 8.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code sections 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lots

in trust, with power of sale, to Quinn A. Sperry, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

- 8.7 **Homestead Waiver.** Pursuant to Utah Code section 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 8.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to vote, (2) access to the amenities in the Project, and (3) rights to receive a utility or other service paid for as a common expense.
- 8.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any Occupant in a Dwelling for any delinquent Assessment balance more than sixty (60) days late. Each Occupant, by moving into the Project, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.
- 8.10 **Attorney Fees Incurred as a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessarily related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 8.11 **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to any failure to pay

Assessments.

ARTICLE 9: PROPERTY RIGHTS IN LOTS & COMMON AREA

9.1 General Easements to Common Area and Lots.

- (a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and facilities, subject to any other restrictions related to such use. Such right and nonexclusive license shall be appurtenant to and shall pass with title to each Lot and in no event shall such appurtenant rights be separated therefrom. Occupants shall have the same access and use rights to the Common Area and facilities as an Owner. All such rights shall be subject to any Rules established by the Board of Directors.
- (b) The Association shall have nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and to maintain, repair, replace, or effectuate the restoration of the Common Area and facilities that the Association is responsible for maintaining which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and facilities for purposes necessary for the proper operation of the Project.

9.2 **Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, Lots, or Lot Owners in the Project are hereby established and dedicated; provided, however, use of said easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and facilities and the Lots by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area and facilities or Lots for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through, or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Lot.

9.3 **Easements for Encroachments.** If any portion of the Common Area or any Subdivision Improvement encroaches upon any Lot, or if any Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the

Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

- 9.4 **Limitation on Easement.** An Owner's equal, undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Lot remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods, if any such infraction is not corrected during any prior 60-day suspension period;
 - (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access, and to have rights of ingress and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 9.5 **Views.** Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.

ARTICLE 10: USE LIMITATIONS & CONDITIONS

- 10.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code § 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 10.2 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. Unless the Association adopts additional rules regulating signs in the Project, no signs or any other device with the apparent purpose of communicating any message to someone outside of a Lot shall be hung or displayed on a Dwelling or Lot except as permitted herein, or by the Board in writing. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Lot.
- (a) Occupants may display one reasonably sized American flag on the exterior of a Dwelling consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. Flags, if displayed, must be

displayed in accordance with United States Code Title 4, Chapter 1.

- (b) Occupants may display political signs related to a particular election. Political signs are permitted for a period of 60 days before and two days after any election. One sign per candidate or ballot measure of no more than 20x24 inches in size is permitted for each Lot.
- (c) Occupants may display one "for sale," "for rent," or "yard sale" sign in front of a Dwelling or Lot.

10.3 **Nuisance.** No noxious or offensive activity shall be carried on within the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal body. The Board may adopt rules that further describe the activities that are deemed to be nuisances within the Project. A Nuisance includes but is not limited to:

- (a) Any unclean, unhealthy, unsanitary, unsafe, unsightly, untidy, or unkempt condition or any condition noxious to the senses including but not limited to any condition that emits any foul, unpleasant, or noxious odors or any condition that causes any unreasonable noise or other unreasonable condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other Occupants at the Project;
- (b) Actions or activities tending to cause unreasonable embarrassment, discomfort, annoyance, distress or a disturbance to any other Occupant, their guests or invitees, particularly if police or the sheriff must be called to restore order;
- (c) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence is in any way illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project by other Occupants or their guests and invitees;
- (d) Foot or vehicle traffic in, on, or about any Lot beyond that expected for a typical personal residence, especially after 10:00 p.m. and before 7:00 a.m.;
- (e) Excessive noise beyond that which is typical for a residence after 10:00 p.m.;
- (f) Causing smoke to drift or otherwise enter into the Common Areas, another Lot, or the Limited Common Area of another Lot. Neither an Owner complaining of smoke or the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project or to any Lot to prevent drifting smoke from entering into that Lot or any Balcony or Patio associated with that Lot. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Lot or its Limited Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking
- (g) The failure to regularly remove rubbish, trash, refuse, waste, dust, debris, and garbage from a Lot; and
- (h) The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to

cause disorderly, unsightly, or unkempt conditions.

- 10.4 **Temporary Structures.** No structure or building of a temporary character, including a tent, trailer, or shack, shall be placed upon the Project or used therein unless it is approved by the Board of Directors.
- 10.5 **Parking.** The primary purpose of each garage appurtenant to each Lot is for the parking and storage of automobiles and other vehicles. Generally all parking of vehicles should be in garages or, driveways. The parking of vehicles are not allowed on the community streets overnight. No vehicle may be parked or driven on or over sidewalks (unless the sidewalk is part of the driveway), curbs, or landscaping.
- (a) Vehicle maintenance shall not be conducted on a Lot, except that limited maintenance may be performed in garages and limited emergency maintenance, not to exceed 24 hours, may be performed on an Owner's driveway.
 - (b) Unless otherwise permitted by the Association in the Rules, no recreational vehicles (including, without limitation, motorcycles, trailers, campers, vans, or boats) shall be parked or stored outside of a garage.
 - (c) The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, without limitation: (1) Rules allowing or causing to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (3) restrictions on the time period and duration of temporary parking, and (4) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners whose guests violate such Rules.
- 10.6 **Recreational Vehicles.** Recreational vehicles, such as trailers, campers, vans, RV's, boats, snowmobiles, OHVs, oversized vehicles, and other similar recreational vehicles shall not be allowed to be kept on a Lot unless said vehicle or trailer is kept at all times within a garage. Recreational vehicles, such as trailers, campers, vans, RV's, boats, snowmobiles, OHVs, oversized vehicles, and other similar recreational vehicles shall be allowed to be parked for loading and unloading for no longer than 48 hours.
- 10.7 **Outside Speakers and Amplifiers.** Owners shall be permitted to maintain reasonable radio, stereo, and speaker equipment for the projection of sound or music on or directed to the outside of any Dwelling, but any such equipment shall be subject to the regulations and limitations in the Association's Rules including any noise and nuisance requirements. Owners of townhome lots shall not be permitted to make alterations to the exterior common area walls of the townhome buildings for the installation of speakers or other equipment without the approval of the Board.
- 10.8 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except as may be permitted by the Board of Directors in the Rules.
- 10.9 **Holiday Decorations.** Holiday decorations may be displayed on the outside of Dwellings within a reasonable amount of time before and after the related holiday. The Association may adopt additional Rules to regulate holiday decorations in the Project, to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol,

idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Dwelling with the apparent purpose, in whole or in part, of making it visible to people outside of the Dwelling.

10.10 **Unsightly Items.** The Board may adopt Rules regulating the removal, accumulation, and placement of any rubbish, debris, or unsightly material, conditions, or items. Unless and until the Board has adopted Rules, the following shall apply:

- (a) All areas outside of Dwellings shall be kept in a clean and orderly fashion.
- (b) All refuse, garbage and trash shall be kept at all times in a covered, noiseless container when left outside of a Dwelling, and any such container shall be kept behind the front main plane of the house.
- (c) Occupants may leave their garbage cans on the street in front of their for pick-up for no more than 24 hours.
- (d) No metals, bulk materials, building supplies, scrap, refuse, trash or non-operable vehicles shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view.
- (e) No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used as a blind, shade, or cover on the inside of any exterior window in any Dwelling or structure. Windows may only be covered with coverings that are specifically designed for windows, such as blinds, curtains, and drapes.

10.11 **Animals.** No animals of any kind shall be raised, bred, or kept in any Lot, except that animals of a type generally kept in households such as dogs, cats, birds, fish, and hamsters may be kept, provided that no animals are raised, bred, kept, or maintained for any commercial purposes and that any animals do not cause a nuisance. All fecal matter shall be immediately cleaned up from any exterior area of a Dwelling, Lot, Common Area, or Limited Common Area within the Project. Animals shall not be permitted to make unreasonable noise at any time. The owner shall not have any more than two(2) of any kind of animal. The Association may adopt additional rules concerning animals including but not limited to the use of Common Areas by animals, the liability of individual Owners for damage caused by their animals, registration requirements, the use of leashes, and fines for the violations of such rules.

10.12 **Residential Occupancy.** No trade or business may be conducted in or from any Dwelling unless:

- (a) A Builder Model Home;
- (b) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling or Lot;
- (c) The business activity conforms to all zoning and legal requirements for the Project and the business activity;
- (d) The business activity does not involve persons coming onto the Project who do not reside in the Project;
- (e) The business activity does not involve the solicitation of Occupants or Owners of the

Project;

- (f) The business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners and Occupants of the Project;
- (g) The business activity will not result in the increase of the cost of any of the Association's insurance;
- (h) The Owner of the Lot resides in the Dwelling in which the business activity is proposed for the entire time any business activity is conducted; and
- (i) The Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

10.13 **No Subdivision, Timeshare, or Recording by Owners of Terms & Conditions.** No Lot shall sell or lease part thereof. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot, any Dwelling, or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

10.14 **Landscape Maintenance.** Owners of Single Family Lots shall be responsible for maintaining their yards and fences, and mowing their lawns. The Association shall be responsible for the landscaping adjacent to the townhome buildings. The Association may adopt Rules further regulating the landscape maintenance for the Lots including standards for repairs, weed control, etc.

10.15 **Lighting.** The Board may adopt rules setting forth exterior lighting standards and regulation. If such rules are adopted, then exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.

10.16 **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot or Dwelling unless such installation is an integral and harmonious part of the architectural design of the Lot or Dwelling and is consistent with solar panel and other design restrictions set forth in the Design Guidelines. The DRC shall have the sole discretion to determine compliance with the Design Guidelines. Under no circumstances shall solar panels be installed so as to be visible from any Lot or street in the Project without prior approval from the DRC.

10.17 **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect

whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears after reasonable investigation under the circumstances that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

10.18 Hazardous Substances.

- (a) Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not Environmental Law. The preceding two (2) sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Lot or the Project.
- (b) Except as incidental to the storage of camping equipment, vehicles, and other normal maintenance equipment and items, no one shall use or permit to be brought into the Dwellings or Lots any flammable oils or fluids such as gasoline, kerosene, naphtha, benzene, other explosives, or other such articles that are abnormally hazardous.
- (c) No one shall permit anything to be done or kept on a Lot or Dwelling which will result in the cancellation of insurance or which would be in violation of any public law, ordinance, or regulation.
- (d) No fireworks are permitted to be discharged on any Lot or on any Common Area in the Project.
- (e) Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from, or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substance(s) was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substance(s) on the Project. The obligations of each Owner under this section shall survive any subsequent sale by an indemnifying Owner.
- (f) As used in this section, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law including but not limited to the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

ARTICLE 11: INSURANCE

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand-alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** The Board of Directors may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; and (3) a description of any earthquake insurance and material exclusions and limitations for that coverage, and if no earthquake insurance is obtained, a conspicuous and clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;” and (4) a description of any flood insurance and material exclusions and limitations for that coverage, and if no flood insurance is obtained, a conspicuous and clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report may also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be provided to any Owner upon request.
- 11.3 **Property Insurance.** To the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Association’s obligation to maintain, the Association shall maintain a policy of property insurance covering the Common Area, including all buildings and improvements, building service equipment, and fixtures thereon.
- (a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to or otherwise permanently part of or affixed to Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.
 - (b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft and (2) all perils normally covered by “special form” property coverage.
 - (c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the

insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

- (d) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000), an amount not less than ten thousand dollars (\$10,000).

11.4 **Earthquake Insurance.** The Association may purchase earthquake insurance as the Board deems appropriate.

11.5 **Flood Insurance.** If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, the Board may purchase flood insurance covering the Project or that portion of the Project located within the Special Flood Hazard Area.

If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

11.6 **Comprehensive General Liability (CGL) Insurance.** For so long as the Association has any obligation to maintain Common Area, the Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owners' membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

11.7 **Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board Members, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

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

11.9 **Workers' Compensation Insurance.** If the Association has any employees, the Board shall

purchase and maintain in effect workers' compensation insurance for all employees, if any, of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.

- 11.10 **Association's Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy: (a) are payable to an Insurance Trustee (defined in Section 11.11 below) if one is designated, or to the if one is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary and is related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Lots. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.
- 11.11 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding fifty percent (50%) or more of the Allocated Interests, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.12 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and, upon written request, to any Owner or Lender.
- 11.13 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.14 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.15 **Waiver of Subrogation Against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Lot Owner if an Owner resides in the Lot, and the Association's agents and employees.
- 11.16 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against any Person or entity at fault for the loss.

11.17 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 12: DESTRUCTION OF IMPROVEMENTS

Area structure, or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:

- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
- (b) The Board, or any Insurance Trustee, if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any.
 - (1) **Damage to a Portion of Project—Insurance Proceeds.**
 - (i) If a portion of the Project for which insurance is required under this part is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (i) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (ii) Owners holding at least seventy-five percent (75%) of the Allocated Interests in the Association vote not to rebuild.
 - (ii) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.
- (c) If the Board, in good faith, determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain additional bids that it determines reasonably reflect such costs. Such determination shall be made by the Board as soon as possible.
- (d) The Board may engage the services of a reputable, licensed architect to advise and consult with the Board on all actions and decisions under this section.
- (e) The Board may contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Common Area in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

12.2 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer with regard to any totally or partially destroyed townhome building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

- 12.3 **Repair of Townhome Lots.** The repair of any damage to a Townhome Lot shall be made by and at the individual expense of the Owner(s) of that Single Family Lot.
- 12.4 **Repair of Single Family Lots.** The repair of any damage to a Single Family Lot shall be made by and at the individual expense of the Owner(s) of that Single Family Lot.
- 12.5 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of insurance proceeds allocated to such Lot.

ARTICLE 13: EMINENT DOMAIN

- 13.1 **Taking of Common Area.** If a portion of the Common Area and Facilities is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 13.2 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.3 **Total Taking of a Lot.** If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Lot and Allocated Interest regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Lot's Allocated Interest automatically shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration that accomplishes the adjustment required for this section.
- 13.4 **Partial Taking of a Lot.** Except as provided in Section 13.3, if part of a Lot is taken by eminent domain, or sold under threat thereof, so that such Lot may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Lot. Upon such a taking, that Lot's Allocated Interest in the Common Area shall remain the same.
- 13.5 **Priority and Power of Attorney.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area or any part thereof.

ARTICLE 14: TERMINATION

- 14.1 **Required Vote.** Except as otherwise provided in Articles 12 and 13, the Project may be terminated only by the approval of Owners holding at least seventy-five percent (75%) of the Allocated Interests.
- 14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite

number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Wasatch County Recorder and is effective only on recordation.

- 14.3 **Sale of Project Following Termination.** A termination agreement may provide that the Association's entire interest in the Project be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project on the termination of the Project or related to the approval of the sale of the Project. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold, immediately upon approval of the sale of the Property by the Owners or the approval of the Owners of Termination of the Project, title to that real estate shall immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have a right to occupancy of the Common Areas in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.5 **Proceeds of Sale.** The proceeds of any sale of real estate or assets of the Association shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders according to their Allocated Interest. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Lots that were recorded before termination may enforce those liens in the same manner as any lien holder.
- 14.6 **Allocation upon Termination.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders

ARTICLE 15: AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated

Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose in

accordance with the Bylaws. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot.

- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association or if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.
- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Board of Directors, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Wasatch County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot, that Owner of the modified Lot must consent in writing. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, (2) grants the Association power of attorney to sign necessary documents on each Owner's behalf as necessary for the agreement, amendment, or correction, and (3) consents that the president of the Association, on behalf of the Association and its Board, has the authority to execute any such amended Plat, supplemental Plat, or correction to the Plat on behalf of the Association and all Lot Owners in the Project.
- 15.5 **Amendment to Conform to Law.** The Board of Directors may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA, or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a

regular practice in area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section.

- (b) The members of the Board of Directors must unanimously agree to the amendment at the time it is recorded.
- (c) The Board of Directors must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this section of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (a) notifies the Owners that it intends to amend the Declaration pursuant to this section, (b) provides notice to the Owners of their the right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly return the objection. The Board of Directors may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this section, no more than thirty percent (30%) of the Owners have objected to the amendment.
- (e) Having otherwise complied with all of the requirements of this section, the Board Members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Wasatch County.

ARTICLE 16: INTERPRETATION, CONSTRUCTION, & APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Plat, the Declaration, the Articles, the Bylaws, and then the Rules.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners

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

- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

ARTICLE 17: NOTICE

- 17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Association.
 - (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Unless

otherwise provided by law, such as provided in Utah Code § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.

- (iii) By electronic transmission to an Owner which includes:
 - (A) By email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent.
 - (B) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.
 - (iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (2) Notwithstanding subsection (1) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.
 - (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot, whether electronic or not. In case any two (2) co-Owners receive conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot address.
 - (4) In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the primary Dwelling and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given; or (b) ten (10) days after the posting.
- (b) Notice to a Lender. Notice to a Lender shall be delivered by first-class U.S. Mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
 - (c) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

- (1) by a written notice delivered personally to a Board Member, which shall be effective upon delivery;
- (2) by a written notice placed in the first-class U.S. Mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit;
- (3) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications or (2) that is emailed to an email address from which the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed effective when received, or five (5) days after it is sent;
- (4) by facsimile (whether to a machine or by other means) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent; or
- (5) by text message to a phone number provided by the Association for the purpose of Association communications, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.

ARTICLE 18: ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

- (a) **Owner Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) **Costs.** The term "costs" as used in this section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.
- (c) **Exception to Owner's Liability for Fees and Costs.** If, related to (1) any dispute with an Owner, (2) any challenge by an Owner to a position of the Association on a Term and Condition, or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (1) the Association could not establish an initial position on without having incurred the fees and costs, or (2) results in a

substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

ARTICLE 19: RESERVES

- 19.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area, pursuant to the following provisions:
- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments, as determined by the Board.
 - (b) **Amount.** In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
 - (c) **Owner Veto.** Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the allocated voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
 - (d) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
 - (e) **Segregation of Reserves.** In accordance with Utah Code § 57-8a-211, the Association shall segregate money held for reserves from regular operating and other accounts.
 - (f) **Reserve Analysis.** In accordance with Utah Code § 57-8a-211, the Board shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Board shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (g) Qualifications for Person Preparing Reserve Analysis. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis. The Person preparing the reserve study shall have: (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferable qualifications include the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) Summary and Copies of Reserve Analysis. In accordance with Utah Code § 57-8a-211, the Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to any Owner requesting a copy.

ARTICLE 20: LEASING AND NON-OWNER OCCUPANCY

- 20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Lot shall be governed by this section, the Rules, and procedures adopted as allowed in this section.
- 20.2 **Definitions.** For the purpose of this section:
 - (a) “Non-Owner Occupied Dwelling” means:
 - (1) For a Lot owned in whole or in part by a natural individual or individuals, the Dwelling is occupied by someone when no individual Owner occupies the Dwelling as the individual Owner’s primary residence or
 - (2) For a Dwelling owned entirely by one or more entities or trusts, the Dwelling is occupied by anyone.
 - (b) “Family Member” means:
 - (1) the parent, sibling, or child of an Owner and that Person’s spouse and/or children, or
 - (2) in the case of a Dwelling owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot if the trust or other estate planning entity that owns the Lot was created for the estate of (i) a current Occupant of the Lot, or (ii) the parent, child, or sibling of the current Occupant of the Lot.
- 20.3 **No Restriction on Leasing and Non-Owner Occupancy.** Subject to the requirements in Sections 20.4 and 20.5, any Dwelling may be leased or Non-Owner Occupied.
- 20.4 **Permitted Rules.** The Board of Directors may adopt Rules requiring:
 - (a) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.

- (b) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration. The association may charge a reasonable fee for the administration of non-owner occupancy reporting and monitoring, but at no time shall such fee be more than the actual costs incurred by the Association for such administration.

20.5 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Dwellings must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least three (3) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident.
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board.
- (c) A Non-Owner Occupant may not occupy any Dwelling for transient, short-term (less than six months), hotel, resort, vacation, or seasonal use (whether for pay or not).
- (d) No Owner may lease less than the entire Dwelling unless the Owner resides in the Dwelling. (e) Except as a guest of an Owner, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not).
- (f) The number of Lots within the Project that are permitted to be Non-Owner Occupied may not exceed fifty percent (50%) of the Single Family Lots, with the quota for each category of Lot being calculated separately. The fifty percent Lot maximum shall be calculated by including any grandfathered Lots and those Lots exempted under Section 20.6.
- (g) Any Lots that are Non-Owner Occupied at the time this Declaration is recorded with the County Recorder's office shall be grandfathered and allowed to remain Non-Owner Occupied, subject to the provisions herein, until such time as the ownership of the Lot is conveyed or the Lot becomes Owner-Occupied. All grandfathered Lots must conform to the provisions in this Article.
- (h) The home buyer must occupy the home for the 1st twelve months. The only exception to this rule is if they are a family member.

20.6 **Exceptions.** If a Non-Owner Occupied Lot is owned by a Family Member of the Occupant, if the Owner is in the military and deployed for active duty, if the Owner is a trust or other entity created for estate planning purposes, or if the Lot Owner has been relocated for the Owner's employment for a period of no less than two (2) years, then the following applies notwithstanding anything to the contrary herein:

- (a) Subsection 20.5 shall not apply to that occupancy;

- (c) No written agreement regarding occupancy needs to be created between the Occupant and the Owner; and
- (d) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation

20.7 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Dwelling shall be responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

ARTICLE 21: GENERAL PROVISIONS

- 21.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 **No Liability of Officials.** To the fullest extent permitted by applicable law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence.
- 21.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or

damage occurred by reason of the intentional act of the Association.

- 21.5 **Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 21.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area and Facilities that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Board of Directors are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 21.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area and Facilities, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY

OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

ARTICLE 22: DECLARANT RIGHTS

- 22.1 **Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the rights provided for in this Article. If any other Article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, they shall all, nonetheless, be subject to the terms in this Article.
- 22.2 **Right to Appoint Board Members during Control Period.** The Declarant shall have the right to appoint and remove all Board Members during the Declarant Control Period. In the appointment of Board Members, the Declarant shall not be bound by any qualifications for Board Members in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Control Period ends. The provisions of Article III, Sections 3.2(a), (e), and (f) of the Bylaws shall not apply to the Declarant appointed Board during the Control Period. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Board and the DRC without appointing Board Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 22.3 **Control Period.** The Control Period shall continue in effect for as long as the Declarant is the record owner of any Lot and/or any parcel or piece of land within the Project or until the Declarant elects, in writing, to terminate the Control Period. Declarant shall have the right to retain control, power, and authority over, and all decision-making ability or authority for, the Association and/or the Project during the “Control Period” including all Architectural Review and approval. The Declarant shall determine whether to hire professional management during the Control Period.
- 22.4 **Easement Rights.** The Declarant shall have an easement for access across the entire Project and may utilize, allow others to utilize, or may grant easements over and through any easement right reserved to anyone in the Declaration.
- 22.5 **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant receives approval from any Owner of a Lot that has any boundary modified by the Plat.
- 22.6 **Assessment Rights.** The Declarant shall have the right to set all Assessments, regular and special, during the Declarant Control Period. Notwithstanding the Assessment of other Lots, no Lots owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments.
- 22.7 **Right to Amend Declaration, Bylaws, and Rules.** Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, the Bylaws, and the Rules in any way, and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners. Any such amendment to the Bylaws or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer or Manager of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and

all Persons having an interest therein, including all Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Lot.

- 22.8 **Expansion of Project/Additional Land.** The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason.
- 22.9 **Assignment of Special Declarant Rights.** Declarant may, at any time, by recording a written notice, assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person or entity prior to the end of the Declarant Control Period. In the case of abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the Project, or to be expanded into the Project, or unfinished Lots.
- 22.10 **Exceptions from Use Restrictions.** The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Lots owned by the Declarant.
- 22.11 **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents, and specifically in this Article 22 and Article 23, shall not be substantively or procedurally altered without the written consent of the Declarant until five (5) years have passed after the Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of Article 22 or Article 23, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 22 or Article 23 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.
- 22.12 **Use of Lots and Common Areas.** During the Declarant Control Period, the Declarant shall have the right to use any Lot owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Lots owned by the Declarant, or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one or more sales offices and model homes. Such offices and model homes may be located in any Lot with the permission of the Owner of that Lot, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed on the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices, at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only, or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model homes, signs, banners, or similar structures or devices.
- 22.13 **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Article do not impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and any Owner hereby expressly waive and disclaim any

such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

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

ARTICLE 23: CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION

- 23.1 **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot or Dwelling that the Owner is purchasing, or any aspect of the Project; all prior to purchasing a Lot or Dwelling. Moreover, if any warranty has been provided, an Owner Warranty has been provided to each Owner identifying those items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot or Dwelling, having received a written warranty, if any warranty is provided, and having paid market price for a Lot or Dwelling in the condition it and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to then seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project, outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot or Dwelling) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots or Dwellings for years, unfairly prejudicing those Owners who must or want to sell their Lot or Dwelling during any period when litigation is pending. For this reason, the Owners (by purchasing a Lot or Dwelling) and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms, and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce, from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners, by and upon the purchase of a Lot or Dwelling, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages arising from defects of any kind related to construction or development of the Project. The intent of this section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the buildings and fixtures on the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.
- 23.2 **Association Warranties.** The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project.

The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided, or that the warranties will cover any particular component or aspect of the Project.

- 23.3 **Owner Warranties.** The Declarant may have provided certain warranties to the Owners related to the Dwelling purchased. The first Owner of a Dwelling to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties from the Declarant to any Owner, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.
- 23.4 **Waiver of Subrogation and Release.** The Association and each Owner waives any right to subrogation against the Declarant and any builder in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner, or of the Association, from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and builder, their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant and builder, their officers, employees, owners, and representatives from any and all liability 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, or representatives from any claims barred or released by this provision, including, but not limited to, any claim brought under any right of subrogation.
- 23.5 **Declarant and/or Builder Litigation.**
- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed: (1) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period.

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

related to any such claim) from any such claim, and to indemnify Declarant and builder from any liability arising therefrom.

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

agreement related to that representation.

(vii) A detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action. In addition to the requirements above and before commencing any action, the Association must obtain the approval of 85% of all Owners (not 85% of those present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days after the meeting required above for notice, and no later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action, or to pay for any costs associated with any such action, including, but not limited to, copying costs, deposition costs, expert witness costs, and filing fees.

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

(j) The existence of procedures and/or requirements in this section applicable to claims against

the Declarant or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims, or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that is prohibited by this Declaration are provided solely in case any such claim is permitted by law, notwithstanding the terms of this Declaration.

- (k) Prior to retaining or engaging any lawyer or law firm to represent the Association related to any litigation described in this section, the Association shall obtain independent counsel to review the engagement letter governing that representation, and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure

that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this Declaration.

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

[Remainder of this page intentionally left blank]

IN WITNESS THEREOF, the undersigned officer of the Association hereby certifies that the Board of Trustees has obtained the affirmative vote or consent establish this Enabling Declaration This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROSECREST COMMUNITIES, PLAT S, JUNIPER BEND is executed as of the day and year written below.

DATED as of the ____ day of _____, 20__.

ROSECREST COMMUNITIES, LLC.

By: _____

Name: _____

Its: _____

STATE OF UTAH)
) ss.
COUNTY OF _____)

On this _____, day of _____, 20____, personally appeared before me **(Name of Document Signer)** _____, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say (i) that he/she is the **(Title or Office)** _____ of the Rosecrest Communities, LLC.. (the "Declarant"), (ii) that said document was signed by him/her on behalf of said Association by authority of the Association's governing documents and/or resolution of its governing body and (iii) acknowledged to me that said Association executed the same.

Notary Public

EXHIBIT B

BYLAWS

FOR

JUNIPER BEND at Rosecrest HOA, INC.

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BYLAWS OF JUNIPER BEND at Rosecrest HOA, INC.

These Bylaws are hereby adopted and established as the Bylaws of the Juniper Bend at Rosecrest HOA, Inc. (the "Association"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

ARTICLE I: DEFINITIONS

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

ARTICLE II: OWNERS

- 2.1 **Annual Meetings.**
- (a) **Requirement.** An annual meeting of the Owners shall be held each calendar year.
 - (b) **Date and Time.** The Board of Directors shall set the date and time of the annual meeting of Owners and may, from time to time, change the date and time for the annual meeting.
 - (c) **Purpose.** The Annual Meeting shall be held for any, or all, of the following purposes:
 - (1) Electing members of the Board of Directors;
 - (2) Distributing the most recent financial report and budget statement;
 - (3) A review and discussion of the Rules and a procedure for Owners to submit proposed Rules, or revisions to existing Rules, to the Board for consideration;
 - (4) Distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
 - (5) Distributing the most recent reserve study summary, permitting discussion on reserve funding options, and voting on whether and how to fund the reserve account; and
 - (6) Transacting such other business as may properly come before the meeting.

- (d) **Approval of Minutes.** The minutes of the annual meeting shall be approved by a majority of the Members in attendance at the following Annual Meeting.
- (e) **Election of Board Members.** If the election of the Board members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment, the Board of Directors shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Board of Directors, the President, or upon the written request of Owners holding no less than twenty-five percent (25%) of the Allocated Interest of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Board may designate the office of the Manager or any place within ten (10) miles of the Project as the place of meeting for any annual or special meeting.

2.4 Notice of Meetings. The Board shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30) nor fewer than ten (10) days prior to the meeting.

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

2.6 Quorum. Those Owners present in person or by proxy at any duly called meeting of the Association in compliance with Sections 2.1 through 2.5 herein, shall constitute a quorum for the adoption of decisions. The vote of the Owners representing a majority of the Allocated Interest of the Owners in attendance in person or by proxy, shall decide any question brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration (as amended), or these Bylaws require a fixed percentage of Owners' Allocated Interests to approve any specific action (*e.g.*, amending Governing Documents), that percentage shall be required to approve such action.

- 2.7 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owners' attorney when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or person who has been authorized by the Association to accept proxies at the meeting.
- 2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one (1) vote for each Lot of such Owner. The Declarant shall be entitled to twenty-five (25) votes for each Lot the Declarant owns in the Project. The affirmative vote of a majority of the votes entitled to be cast by the Declarant and Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. The election of Board Members shall be by secret ballot. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Lot.
- 2.9 **Ballots and Written Consent.** The Association (1) may act without calling a meeting of the members and without voting in person by utilizing either written consents consistent with Utah Code § 16-6a-707, as may be amended or renumbered; or (2) may take action by written ballots consistent with Utah Code § 16-6a-709, as may be amended or renumbered.
- 2.10 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy, (2) the date of the meeting, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

ARTICLE III: BOARD OF DIRECTORS

3.1 Number, Tenure, Qualifications, and Election.

- (a) Number of Members. The Board of Directors shall be composed of five (5) persons meeting the qualifications stated in the Declaration and these Bylaws.
- (b) Board Member Requirements. Board Members must: be at least 18 years old and be an Owner or the spouse of an Owner of a Lot in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. Any candidate whose election or appointment would contravene these requirements shall be ineligible for election or appointment. Notwithstanding the foregoing, any Board Member elected or appointed by the Declarant during the Control Period shall not be bound by these qualifications.
- (c) Term. The term of each Board Member shall be two (2) years. The terms of the Board Members shall overlap so that three (3) Board Members shall be elected one (1) year and two (2) Board Members the following, and so on. Board members may serve consecutive terms if elected.

The Board Members elected at the end of the Control Period shall draw lots to determine initial term lengths. Two (2) Board members shall serve an initial term of one year and three (3) board members shall serve an initial term of two (2) years.

- (d) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Board of Directors. If the Association gives advance notice of any persons seeking election to the Board of Directors, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board Members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (e) Election. At each annual meeting of the Association an election shall be held to fill any vacancies on the Board. Board Members will be elected by a simple majority vote of the Owners present at the annual meeting. If two (2) candidates have equal votes, then the issue shall be resolved by a coin toss. All Board Member elections shall be subject to any and all appointment powers granted to the Declarant in the Declaration.
- (f) Disqualification. If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board of Directors shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board of Directors shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board of Directors established that the Board Member was not qualified. If a Board Member becomes

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

- (g) **Removal for Failure to Participate.** If any Board Member shall fail to appear at three (3) successive regular Board of Directors meetings in a row or fifty percent (50%) or more of the regular Board of Directors meetings within any calendar year, after having received proper notice of the meetings and after the Board of Directors has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Board Members may by unanimous vote remove that member and appoint a new member.

3.2 **Meetings.**

- (a) **Regular Meetings.** The Board of Directors shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) **Who is Entitled to Attend.** Consistent with Utah Code § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board of Directors is in executive session.
- (c) **Owner Comments at Board Meetings.** At each special or regular meeting of the Board, the Board shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Board may select a specific time period during the meeting and limit Owner comments to such a time period. The Board may set a reasonable length of time that each Owner may speak.
- (d) **Special Meetings.** Special meetings of the Board may be called by or at the request of any two (2) Board Members or the President of the Association. Notice of any special meeting shall be given at least forty-eight (48) hours prior thereto to each Board Member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears in person at the physical location of the meeting.
- (e) **Quorum and Manner of Acting.** Three (3) Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board. The Board Members shall act only as a Board, and individual Members shall have no powers as such.
- (f) **Place and Notice of Meetings.** The Board may designate any place in Wasatch County as the place of meeting for any regular meeting called by the Board but shall in good faith attempt to hold meetings in as close a proximity to the Project as reasonably possible. All Board Members and Owners who have requested notice shall be given at least forty-eight (48) hours' notice of meetings.
- (g) **Notice to Owners.** Any Owner may request notice of Board meetings by requesting such notice from either a Board Member or the Manager and providing a valid email

address at which the Member will receive notice. Any Owner who has requested notice of Board meetings shall be given notice along with the Board Members.

- (h) Attendance by Telephone or other Electronic Communication. The Board may allow attendance and participation at any meeting of the Board by telephone or any other means that allows for the Board Members to communicate orally in real time including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Board meets by electronic communication, the Board must provide information necessary to allow any Owner who has requested notice of meetings the ability to participate by the available means of electronic communication.
- (i) Executive Session.
 - (1) The Board of Directors or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Board of Directors who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Board.
 - (2) The minutes of the meeting at which an executive session is held shall include:
 - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “to discuss the terms of a management contract with XYZ Company,” “to discuss the pending litigation with XYZ” or “to discuss a complaint of a Rule violation.”
 - (ii) Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as “Decision made regarding attorney-client privileged issue that are recorded in separate and attorney-client privileged minutes of the Executive Session” and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-committee members only as required by law for the disclosure of attorney-client privileged information.
 - (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board of Directors or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
 - (4) Executive sessions may be held to discuss and make decisions related to the following matters:
 - (i) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the

Association's counsel;

- (ii) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
 - (iii) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment;
 - (iv) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations;
 - (v) Discussion of delinquent assessments or fines; and
 - (vi) Discussion of a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy.
- (5) The Board or the Sub-Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Board shall be entitled to be present at executive committee meetings of the Board. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

3.3 **Informal Action and Action by Board Members Without a Meeting.**

- (a) Any action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if each and every Board Member, in writing, either:
 - (1) Votes for the action; or
 - (2) Votes against or abstains from voting, and waives in writing the right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
 - (1) Describing the action taken;
 - (2) Signed by each Board Member; and
 - (3) Not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Board Members then in office were present and voted.
- (d) A Board Member may revoke consent to any action given pursuant to this section by communicating that the member has changed his or her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association (f) Action taken

pursuant to this section has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board Members in any document.

(g) For purposes of this section:

- (1) “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
- (2) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
- (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
- (4) Any response to any electronic communication shall be:
 - (i) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
 - (ii) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
- (5) A communication shall satisfy the requirement to “describe the action taken” if:
 - (i) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
 - (ii) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
 - (iii) the writing from the Board Member sufficiently describes or restates the proposed action.

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

3.5 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.

3.6 **Vacancies.** If vacancies shall occur in the Board of Directors by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by

a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board of Directors occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

ARTICLE IV: OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a President, Vice President/Treasurer, and Secretary.
- 4.2 **Election, Tenure and Qualifications.** The officers of the Association shall be chosen by the Board of Directors annually at the first meeting of the Board of Directors following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be members of the Board of Directors during the entire term of their respective offices.
- 4.3 **Subordinate Officers.** The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Board Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board of Directors at any time, with or without cause.
- 4.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Directors at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board of Directors shall ensure that the duties and responsibilities of the office are performed.
- 4.6 **The President.** The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (1) the right to control the order of the meeting; (2) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (4) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board of Directors. The President shall have the general authority to implement decisions of the Board of Directors and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board of Directors approval as is necessary and prudent to preserve and protect the

Property. The President shall be responsible for the duties of any other office while that office is vacant.

- 4.7 **The Vice President/Treasurer.** The Vice President/Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board of Directors. The Vice President/Treasurer shall have authority and obligation to generally implement the requirements of governing documents as related to the funds of the Association. The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Board of Directors.
- 4.8 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board of Directors may require such person to keep. The Secretary shall execute any necessary communication and notice with the Owners. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board of Directors.
- 4.9 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Directors.

ARTICLE V: SUB-COMMITTEES

- 5.1 **Designation of Sub-Committees.** The Board of Directors may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Directors in a written resolution. The Board of Directors may terminate any Sub-Committee at any time.
- 5.2 **Proceedings of Sub-Committees.** Each Sub-Committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.
- 5.3 **Quorum and Manner of Acting.** At each meeting of any Sub-Committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board of Directors shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board of Directors.

- 5.4 **Resignation and Removal.** Any member of any Sub-Committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 **Vacancies.** If any vacancy shall occur in any Sub-Committee designated by the Board of Directors due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Directors, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled by the Board of Directors.

ARTICLE VI: INDEMNIFICATION

- 6.1 **Indemnification.** No Board Member, officer, or member of a Sub-Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.
- 6.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association by the Board of Directors, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the

payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII: AMENDMENTS

- 7.1 **Amendments.** Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Lots holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose. During the Declarant Control Period, the Declarant may amend, revise, and modify these Bylaws in any way, and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from the Owners.
- 7.2 **Execution of Amendments.** After obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Wasatch County, Utah.

ARTICLE VIII: WAIVER OF IRREGULARITIES

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

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

IN WITNESS THEREOF, the undersigned officer of the Association hereby certifies that the Board of Trustees has obtained the affirmative vote or consent establish this Enabling Declaration This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROSECREST COMMUNITIES, PLAT S, JUNIPER BEND is executed as of the day and year written below.

DATED as of the 3 day of February, 2017.

ROSECREST COMMUNITIES, LLC.

By: RE Management, L.L.C. Manager

By: *Greg Taylor*
Name: Greg Taylor

Its: Manager

STATE OF UTAH)
) ss.
COUNTY OF _____)

On this 6th day of February, 2017, personally appeared before me Gregory O. Taylor, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say (i) that he/she is the Manager of RE Management, L.L.C., the Manager of the Rosecrest Communities, LLC. (the "Declarant"), (ii) that said document was signed by him/her on behalf of said Association by authority of the Association's governing documents and/or resolution of its governing body and (iii) acknowledged to me that said Association executed the same.

Rebecca S. Aulai
Notary Public

