

Recording requested by and
when recorded return to:

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR CHERRYPOINT ESTATES

ALPINE, UTAH

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR CHERRYPOINT ESTATES (this "**Declaration**") is made as of this 22nd day of January, 2024, by Onsen Development, Inc., a Utah corporation ("**Declarant**").

RECITALS:

- A. Declarant holds legal title to certain real property located in the Utah County, State of Utah, described on Exhibit A, attached hereto and incorporated herein (the "**Property**" and/or the "**Community**").
- B. To establish efficient management and to preserve the value and appearance of the Community, the Declarant desires to create a nonprofit corporation that would be assigned the powers and delegated the duties of (i) managing certain aspects of the Community, (ii) enforcing the covenants and restrictions herein, (iii) collecting fines and penalties pursuant to the provisions regarding such fines and penalties hereinafter created and referenced, if any, and (iv) performing such other acts that generally benefit the Community and the Owners. Cherrypoint Estates Owners Association, Inc., a Utah nonprofit corporation, has or will be incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.
- C. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, Occupants or other holders of an interest in the Community, or any part thereof, certain easements and rights and certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various Parcels within the Community.
- D. Declarant desires and intends that the Owners, Mortgagees, Lessees, Occupants, Residents and other Persons hereafter acquiring any interest in or otherwise utilizing property within the Community, will at all times enjoy the benefits of, and will hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the Community and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Community.
- E. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, and enjoyment of the Community and the interests therein conveyed and to establish thereon a planned community.
- F. In order to cause this Declaration to run with the land comprising the Community and to be binding upon the Community and the Owners thereof from and after the date of this Declaration is Recorded, Declarant hereby makes all conveyances within the Community, whether or not so provided in the conveying instruments, subject to the terms and conditions contained herein; and by accepting deeds, leases, easements or other grants or

conveyances to any portion of the Community, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they will be personally bound by all of the terms and conditions hereinafter set forth except to the extent such Persons are specifically excepted therefrom.

G. The Project created by this Declaration is not a cooperative.

NOW, THEREFORE, Declarant does hereby declare and establish the following covenants, conditions, easements, and protective covenants:

ARTICLE I
Definitions

Capitalized defined terms that are not otherwise defined in the body of this Declaration will have the meanings set forth below.

1.1 “**Act**” means the Community Association Act (U.C.A. §§57-8a-101 et seq.), as amended from time to time.

1.2 “**Additional Land**” means and consists of any other real property more particularly described in Exhibit B or within one (1) mile of the exterior of the Property, which property Declarant or Declarant’s Affiliate now owns or in the future may own. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until such land is incorporated as part of the Community in accordance with the provisions of this Declaration.

1.3 “**Architectural Review Committee**” or “**ARC**” means the Architectural Review Committee established by the Association.

1.4 “**Architectural Guidelines**” mean those guidelines described in Section 8.3.

1.5 “**Articles of Incorporation**” or “**Articles**” mean the Articles of Incorporation of Cherrypoint Estates Owners Association, Inc., a Utah nonprofit corporation, as filed with the Secretary of State of the State of Utah.

1.6 “**Association**” means Cherrypoint Estates Owners Association, Inc., a Utah nonprofit corporation, its successors or assigns.

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

1.8 “**Bylaws**” mean and refer to the Bylaws of the Association, attached hereto as Exhibit C and incorporated herein by reference, as they may be amended from time to time.

1.9 “**Claim**” (or collectively, “**Claims**”) means any and all Claims, demands, suits, Actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and

expenses, including, but not limited to, attorney's fees and costs.

1.10 "Community" means Cherrypoint Estates.

1.11 "Community Governing Bodies" has the meaning ascribed to it in Section 4.5.

1.12 "Declarant" means collectively Onsen Development, Inc., a Utah corporation, and its successors or assigns which take title to any portion of the Community for the purpose of development and/or sale and who are designated as Declarant hereunder in a Recorded instrument executed by the immediately preceding Declarant.

1.13 "Declarant Affiliates" mean any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest.

1.14 "Eligible Holder" has the meaning ascribed to it in Section 11.1.

1.15 "FHA" has the meaning ascribed in Section 13.1.

1.16 "Governing Documents" means all documents and applicable provisions thereof as set forth in this Declaration, any Supplemental Declaration, the Bylaws and Articles Incorporation of the Association, the Plat, Rules and Regulations, all written decisions and resolutions of the Board, and any lawful amendments to any of the foregoing.

1.17 "Hazardous Substances" mean any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or containment under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

1.18 "HUD" has the meaning ascribed to it in Section 13.1.

1.19 "Laws" mean any law, regulation, rule, order, statute or ordinance of any governmental or private entity in effect at any time during the Term and applicable to the Project or the Unit and the Owner's use thereof, including, but not limited to, building, fire and safety codes and regulations, building permits, conditional use permits, and certificates of occupancy.

1.20 "Lease" has the means a written document pursuant to which a person or entity that is not related to the Owner may occupy all or a portion of a Unit.

1.21 "Lessee" means the Lessee or tenant under a Lease, oral or written, of any Unit, including an assignee of the Lessee's or tenant's interest under a Lease.

1.22 “**Member**” means a Person entitled to membership in the Association, as provided herein.

1.23 “**Mortgage**” means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.24 “**Mortgagee**” means a beneficiary or holder of a Mortgage.

1.25 “**Municipal Authority**” means any applicable governmental entity or municipality that has jurisdiction over all or some part of the Community, including, without limitation, the Alpine City, Utah.

1.26 “**Occupant**” means any Person other than an Owner, who has actual use, possession or control of a Unit or any portion thereof, or any other Improvement located within the Community.

1.27 “**OTARD**” has the meaning ascribed to it in Section 9.7.

1.28 “**Owner**” will mean and refer to one (1) or more Persons who hold the Record title to any Unit within the Community, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is subject to a written Lease with a term in excess of one (1) year and the Lease specifically so provides, then upon filing a copy of the Lease with the Board the Lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Association.

1.29 “**Parcel**” means one or more legally subdivided lot within the Project as designated on the Plat, intended for single family residential use. Parcel numbers will be synonymous with Unit numbers notwithstanding the assignment of a separate residential address to each Parcel/Unit (Exhibit B).

1.30 “**Period of Administrative Control**” means a period of time commencing as of the date of this Declaration and expiring upon the date that Declarant gives written notice to the Board and Records an instrument with the Utah County recorder’s office wherein Declarant voluntarily surrenders all rights to control the activities of the Association.

1.31 “**Person**” means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.32 “**Plat**” means that certain plat duly Recorded subdividing portions of the Community into Parcels, as the same may be amended from time to time and any plats for future phases of the Project, and which is incorporated herein by this reference.

1.33 “**Project**” means the development known as “Cherrypoint Estates” located in Alpine, Utah.

1.34 “**Property**” has the meaning ascribed to it in Recital A.

1.35 “Record,” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the official records of Utah County, Utah.

1.36 “Regulated Modification” means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to Article XII of this Declaration as set forth below) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, Improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing within the Community as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Declarant or Association, but including by way of illustration and not of limitation:

1.36.1 any building, garage, porch, shed, bathhouse, hot tub, coop or cage, covered or uncovered patio, children’s play fort or play set and any other recreational devices or equipment used outside of a Unit, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters, and any other temporary or permanent modification or alteration;

1.36.2 any other building, structure, improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Architectural Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Community.

1.36.3 any modifications to the structural, mechanical, or electrical elements, systems or components of a Unit.

1.37 “Related Parties” means and applies as follows:

1.37.1 Lessees or other Occupants of each Owner’s Unit are Related Parties of that Owner, and with respect to each such Owner, tenant or other Occupant, Related Parties include: (i) their respective family and other household members (including in particular but without limitation all children and other dependents), (ii) their respective guests, invitees, servants, agents, representatives and employees, and (iii) all other Persons over which each has a right of control or under the circumstances could exercise or obtain a right of control.

1.37.2 Related Parties of the Association and Declarant include their respective members, managers, shareholders, officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.38 “Released Persons” has the meaning ascribed to it in Section 10.15.2.

1.39 “Residence” means any home situated within the Community, including any

exterior elements of an home and the Lot.

1.40 “**Resident**” will mean the occupant of a home located on a Parcel.

1.41 “**Rules and Regulations**” will mean the current applicable Rules and Regulations as same may be supplemented, amended, modified or repealed as provided in Section 6.1 of this Declaration.

1.42 “**Supplemental Declaration**” will mean an amendment or supplement to this Declaration executed by or consented to by Declarant.

1.43 “**Telecommunications Act**” has the meaning ascribed to it in Section 9.7.

1.44 “**Transfer**” has the meaning ascribed to it in Section 10.17.

1.45 “**Unit**” means a Parcel and any Improvements located on such Parcel.

1.46 “**Visible Location**” means a location in the Community which is in Public View.

1.47 “**Warning Notice**” has the meaning ascribed to it in Section 7.1.

ARTICLE II **Declaration**

2.1 **Declaration.** Declarant hereby declares that all of the real property described in Exhibit “A” will be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of and which will run with the real property subjected to this Declaration and which will be binding on all parties having any right, title, or interest in the Community or any part thereof, their heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each Owner thereof. All of the Property within the Community will be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, Rules and Regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Community and evidences his, her or its agreement that all the restrictions, conditions, covenants, Rules and Regulations contained in this Declaration will run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration will be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 **Development of Community.** Notwithstanding the foregoing, no provision of this Declaration will be construed or enforced to prevent or limit the Declarant’s right to complete

development of the Community in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements within the Community. No development or construction activities will be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the ARC, provided that such waiver shall be for a reasonable period of time. Any such waiver need not be Recorded and shall not constitute an amendment of this Declaration.

2.3 Conflicts with Law. In the event of any conflicts between the provisions of this Declaration and the requirements of the applicable ordinances of any Municipal Authority, the more restrictive provisions will control.

2.4 No Condominium. Declarant and each Owner hereby agree and understand that the Community is not, by execution and Recording of this Declaration, being submitted to the provisions of the Condominium Ownership Act (U.C.A. §57-8-1, *et seq.*). This Declaration does not constitute a declaration as provided for in the Condominium Ownership Act and the provisions of the Condominium Ownership Act will not be applicable to the Community or any portion thereof.

2.5 Development. Intentionally omitted.

2.6 Readjustment of Parcel Boundaries. Declarant hereby reserves for itself, Declarant Affiliates and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of the boundary lines between Parcels for purposes of proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not affect any existing permanent improvements (other than landscaping) on the affected Parcel. The authority to realign and adjust such Parcel boundary lines will be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.6. All Owners specifically acknowledge and agree that they will cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Parcel boundary lines by deed or boundary line agreement in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Parcels in relationship to the development of the Community. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat will be required to effectuate any Parcel boundary line adjustments so long as such adjustments are made pursuant to applicable law. More particularly, boundary line adjustments between adjacent Parcels may be executed if:

(a) No new Parcel results from the boundary line adjustment and exchange of title;

(b) The appropriate Municipal Authority (to the extent required by applicable law) and adjoining Property Owners consent to the boundary line adjustment (such Owners' consent to be granted as described above); and

(c) The adjustment does not result in violation of applicable Municipal Authority zoning requirements.

2.7 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, will have the right to make changes or modifications to its plan of development with respect to any Parcels owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Parcels owned by the Declarant.

ARTICLE III
Membership and Voting Rights

3.1 Membership. Every Owner will be deemed to have a membership in the Association. No Owner, whether one (1) or more Persons, will have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, the vote for such Unit will be exercised as provided below. The membership rights of a Unit owned by a corporation or partnership will be exercised by the individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association, subject to the provisions of this Declaration and the Bylaws. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Parcel and Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void.

3.2 Voting. The Association will have two (2) classes of membership, Class "A" and Class "B" as follows:

3.2.1 Class "A". Class "A" Members will be all Owners, including Declarant, with the exception of the Class "B" Member, if any. Each Class "A" Member will be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1 hereof; there will be only one (1) vote per Unit.

3.2.2 Class "B". The Class "B" Member will be Declarant. The Class "B" Member has the right to disapprove actions by the Board. Other rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the other Governing Documents, are specified elsewhere in this Declaration and the other Governing Documents. During the Period of Administrative Control, the Declarant as the sole owner of the Class "B" shares will be the sole entity entitled to vote on all matters and to appoint the members of the Board. Notwithstanding anything herein or in the Bylaws of the Association to the contrary, since the Declarant has the sole voting rights during the Period of Administrative Control, the annual meeting during the Period of Administrative Control will solely include the Declarant and will not include any Class "A" Members, and the Declarant will not be obligated to provide any notices of

any meetings of the Class "B" Member to any of the Class "A" Members. Upon expiration of the Period of Administrative Control, the Class "B" Membership will cease, and only Declarant's Class "A" Membership will remain. Declarant, in Declarant's sole discretion, by a Recorded notice, may elect to terminate the Period of Administrative Control at any time, but will not be required to do so.

3.2.3 Suspension of Voting Rights. The Board may elect to prohibit an Owner from exercising any voting rights as a Member of the Association during any period in which the Owner is in violation of any of the provisions herein.

3.3 Multiple Owners. When more than one Person holds an ownership interest in a Unit (such as husband and wife,), all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Unit owned. The single vote, approval, or consent of such joint Owners must be cast or given in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote, approve, or consent as to any such matter upon which a majority decision cannot be reached. The vote, approval or consent of any single Owner from among such joint Owners is conclusively presumed to be cast or given in accordance with the decision of the majority of the joint Owners and with their full authority, but the Unit's vote will be suspended if more than one (1) Person seeks to exercise it.

3.4 Appurtenant Right. Membership will be appurtenant to and will run with the Property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such Property interest.

3.5 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to the Owner of the Owner's Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association who shall maintain a record of ownership of the Lots. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association.

3.6 Proxies. An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, authenticated by witnesses or a notary public, and is presented to those Association officers conducting such vote. The Owners hereby appoint the Association to be its proxy and representative to represent Owner related to any membership interest and voting rights Owner may have under the Master Declaration and the Shoreline Master Declaration. The Association shall exercise such rights in its discretion using its reasonable business judgment related to the entire Community and not with regard to any particular

ARTICLE IV
Maintenance

4.1 Association's Responsibility. The Association will not have any obligation to maintain any Units, including any driveways, walkways, Improvements, or landscaping located on a Unit or property dedicated to the public, such as park strips and sidewalks.

4.2 Owners' Responsibilities. Each Owner shall maintain the Owner's Unit in a good and attractive condition, including any driveways, walkways, Improvements, or landscaping located on a Unit. Each Owner will remove snow and ice from walkways, sidewalks and driveways adjacent to their Unit. Each Owner shall comply with any and all applicable laws and shall not cause or permit any private or public nuisance on its Unit, such as excessive noise, odor, dust, vibration, or any other activity that would reasonably disturb other Owners and Occupants within the Community.

4.3 Utility Lines. Each Owner will maintain and repair any utility lines that exclusively serve the Owner's Unit.

4.4 Hazardous Substances.

4.4.1 Compliance with Environmental Laws. The Owners shall comply with applicable Environmental Laws, and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, on or within a Unit or the Project. The Owners shall not do, nor allow anyone else by, through or under them such as an Occupant, contractor, or servant, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project in compliance with Environmental Laws.

4.4.2 Environmental Indemnity. 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: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

4.5 Security. The Association may, but will not be obligated to, maintain or support, certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION AND THE BOARD OR THE DECLARANT (COLLECTIVELY, THE "**COMMUNITY GOVERNING BODIES**") NOR ANY OF THEIR RESPECTIVE RELATED PARTIES WILL IN ANY WAY BE CONSIDERED INSURERS OR

GUARANTORS OF SECURITY WITHIN THE COMMUNITY, AND THE COMMUNITY GOVERNING BODIES WILL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER, OCCUPANT, LESSEE, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE COMMUNITY GOVERNING BODIES AND THEIR RESPECTIVE RELATED PARTIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, LESSEE, GUEST, INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO VEHICLES, THE CONTENTS OF VEHICLES, PARCELS AND ANY RESIDENCE, TO PERSONS, TO UNITS, TO IMPROVEMENTS AND TO THE CONTENTS OF THE RESIDENCE AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE COMMUNITY GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, LESSEE, GUEST, INVITEE OR RELATED PARTY RELIED UPON ANY REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, LESSEE, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONSTRUCTION, AND HABITABILITY RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

ARTICLE V

Annexation, Transfer and Withdrawal of Property

5.1 Annexation By Declarant. During the Period of Administrative Control, Declarant, acting without the consent or approval of the Association or any other Owner, will have the right to bring within the scheme of this Declaration additional land (an “*annexation*”) within the area defined as Additional Land herein, so long as the owner of such land (if not Declarant) consents to such action. Such annexation will be accomplished by filing in the Official Public Records of Utah County, Utah, a Supplemental Declaration annexing such property in the form prescribed below. Any such annexation will be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

5.2 Annexation By Association. Subject to the consent of the owner thereof, the Association may annex real property into the Community at any time upon the affirmative vote of Declarant (if during the Period of Administrative Control) or the Declaration (if after the expiration of the Period of Administrative Control) and Members representing a majority of the Class “A” votes of the Association present at a meeting duly called for such purpose. Such annexation will be accomplished by filing of record in the Official Public Records of Utah County, Utah, a Supplemental Declaration in the form described below, signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation will be effective upon filing unless otherwise provided therein.

5.3 Form of Supplemental Declaration. Each Supplemental Declaration must state that land is being annexed, and must contain at least the following provisions: (i) a reference to this Declaration, which reference will state the document number under which this Declaration is

Recorded in the Official Public Records of Utah County, Utah; (ii) statement that the provisions of this Declaration will apply to the annexed land, except as expressly provided otherwise therein; (iii) a legal description of the annexed land; and (iv) if Declarant or the Association is not the owner of the land being annexed, the signatures of both such owner and Declarant, if during the Period of Administrative Control or the Association, if after the Period of Administrative Control.

5.4 Withdrawal of Property. During the Period of Administrative Control, Declarant will have the right at any time to remove or withdraw lands or grant easements or licenses on, over, under or across such lands then owned by Declarant (or other Persons with Declarant's consent) from the Community, so long as such withdrawal or grant of such easement or right is not prohibited by the City of Alpine, Utah or other Municipal Authority. Upon any such withdrawal (but excluding the grant of an easement or license) this Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the lands withdrawn. In order to withdraw lands from the Community hereunder, Declarant will be required only to Record a notice of withdrawal of land which contains: (i) a reference to this Declaration (including the document number under which this Declaration is Recorded); (ii) a statement that the provisions of this Declaration will no longer apply to the withdrawn land; (iii) if Declarant is not the owner of the land so withdrawn, the signatures of both such owner and Declarant; and (iv) a legal description of the withdrawn land.

ARTICLE VI

Rights and Obligations of the Association

6.1 Rules and Regulations. The Board is hereby specifically authorized to adopt, amend, modify, supplement, cancel, limit, create exceptions to, expand, or enforce such reasonable Rules and Regulations applicable to the operation and use of the Community. The Board will have the right from time to time through the exercise of its business judgment on behalf of the Association to promulgate reasonable Rules and Regulations that it deems beneficial to the Community, including, but not limited to: (i) traffic and parking regulations and other traffic control procedures and (ii) all procedural and substantive aspects for the establishment, levy, collection and payment of fines for any violations of any Governing Documents. Rules and Regulations are of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided:

(a) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter);

(b) Rules and Regulations may not be incompatible with the provisions of this Declaration or any Supplemental Declaration; and

(c) Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the Association, the Board will (i) at least fifteen (15) days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a change to the Rules and

Regulations, (ii) deliver a copy of the changes in the Rules and Regulations approved by the Board to the Owners within fifteen (15) days after the date of the Board meeting.

(d) Notwithstanding the requirement in (c) above, the Board may adopt Rules and Regulations without first giving notice to the Owners if there is an imminent risk of harm to a Unit, an Owner, or an Occupant or Resident. The Board will provide a copy of the changes in the Rules and Regulations as provided in (c) above.

(e) A Board action pursuant to this Section 6.1 is disapproved if within sixty (60) days after the date of the Board meeting where the action was taken: (i) (1) there is a vote of disapproval by at least fifty-one percent (51%) of all the allocated voting interests of the Owners in the Association; and (2) the vote is taken at a special meeting called for that purpose by the Owners; or (ii) the Declarant delivers to the Board a writing of disapproval during the Period of Administrative Control.

(f) The Board has no obligation to call a meeting of the Owners to consider disapproval of any action to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce any Rules and Regulations, unless Owners submit a petition, in the manner prescribed in this Declaration for a special meeting, for the meeting to be held. Upon the Board receiving a petition as provided in the preceding sentence, the effect of the Board's action is: (i) stayed until after the meeting is held; and (ii) subject to the outcome of the meeting.

(g) During the Period of Administrative Control, the Declarant may exempt the Declarant from the Rules and Regulations and the rulemaking procedure under this Section.

(h) The Rules and Regulations will treat similarly situated Owners substantially the same.

(i) The criterion of any Rules and Regulations may not abridge the rights of an Owner to display religious and holiday signs, symbols, and decorations inside a Unit, provided that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Unit.

(j) Rules and Regulations may not regulate the content of political signs; provided that Rules and Regulations may regulate the time, place, and manner of posting a political sign, and the Association design provision may establish design criteria for political signs.

(k) Rules and Regulations may not interfere with the freedom of an Owner to determine the composition of the Owner's household; provided that an Association may: (i) require that all Occupants of a Unit be members of a single housekeeping unit consistent with applicable Laws; and (ii) limit the total number of Occupants permitted in each Unit on the basis of the Unit's size and facilities.

(l) Rules and Regulations may not interfere with an activity of an Owner within the confines of a Unit to the extent that the activity is in compliance with local Laws and ordinances; provided that Rules and Regulations may prohibit an activity within a Unit if the

activity is not normally associated with a residential use or permitted by this Declaration or (i) creates monetary costs for the Association or other Owners, (ii) creates a danger to the health or safety of Occupants of other Units, (iii) generates excessive noise or traffic, (iv) creates unsightly conditions or an unreasonable source of annoyance to Persons within the Community.

(m) Rules and Regulations or action by the Association or Board may not interfere with the use or operation of an amenity that the Association does not own or control the exercise of a right associated with an easement.

(n) Rules and Regulations may not divest an Owner of the right to proceed in with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the Governing Documents in existence at the time the completed application was submitted by the Owner for review.

(o) The Association may through Rules and Regulations provide for the indemnification of its officers and Board consistent with applicable Laws.

(p) The Association may not prohibit an Owner from displaying a United States flag inside a dwelling or on a Parcel, if the display complies with United States Code, Title 4, Chapter 1, The Flag, or other applicable law.

(q) If permitted by applicable law, the Board may modify the conditions and stipulations set forth in subsections (c) through (p) above.

6.2 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the other Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege so given to it or reasonably necessary to effectuate any such right or privilege.

6.3 Enforcement.

6.3.1 **General.** Declarant, the Association, and their successors and assigns have the exclusive right to enforce observance and performance of all restrictions, covenants, conditions and easements set forth in this Declaration and in all other Governing Documents, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, and all other rights and remedies set forth in this Declaration, to an injunction either prohibitive or mandatory.

6.3.2 **Right to Inspect and Cure Defaults.** The Association may photograph any violation or suspected violation at any time and otherwise obtain evidence to confirm the existence or non-existence of any suspected violation in any reasonable manner without liability in trespass or otherwise.

6.3.3 **No Estoppel, Waiver or Liability.** Failure of Declarant or the Association to enforce any of the provisions of this Declaration or any other Governing Documents will in no event be deemed a waiver of the right to do so thereafter (including without limitation as to the

same or similar violation whether occurring prior or subsequent thereto). No liability may attach to Declarant, the Association, or their respective Related Parties or committee members, for failure to enforce any provisions of this Declaration or any other Governing Documents.

6.3.4 Cumulative Rights and Remedies. Each right and remedy set forth in this Declaration and each other Governing Document is separate, distinct, and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided or as provided by applicable Laws, or the failure to exercise a particular right or remedy, will not be construed as a waiver of such right or remedy or any other right or remedy.

6.3.5 Liability for Conduct of Related Parties. Each Owner, Lessee and Occupant must ensure that their respective Related Parties strictly comply with all applicable provisions of this Declaration and all other Governing Documents. Each Owner, Lessee, and Occupant is liable for all consequences of any such violation by such party's Related Parties, and each Owner, Lessee and Occupant is jointly and severally liable for all consequences of any such violation by the Owner's, Lessee's and/or Occupant's Related Parties. To the same extent as aforesaid each Owner, Lessee and Occupant must indemnify and hold harmless Declarant, the Association and their respective Related Parties from any and all Claims of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, resulting, directly or indirectly, from any such violation.

6.3.6 Obligation for Payment of Costs and Expenses Resulting from Violations. Each Owner, Lessee and/or Occupant found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents is jointly and severally liable for payment to the Association for, and to indemnify and to hold and save harmless the Association and its Related Parties from, any and all Claims of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are due and payable upon demand by the Association or its representative without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification the demand will contain a statement setting forth the Association's payment or liability to pay the Claim with sufficient detail to identify the basis for the payment or liability to pay.

6.3.7 Notice and Opportunity to be Heard. Substantial compliance with the procedures set forth in the Bylaws is sufficient whenever this Declaration or other Governing Documents require notice and opportunity to be heard regarding any alleged violation of the Governing Documents. The right of appeal to the Board as provided in the Bylaws includes appeal from the decisions of any Association committee.

6.3.8 Filing of Notices of Non-Compliance. At any time the Board determines in good faith there probably exists any noncompliance with any provisions of this Declaration or any other Governing Documents, the Board may, at its option, direct that a notice of noncompliance

be Recorded covering the affected Unit or Units and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand.

ARTICLE VII **Enforcement**

7.1 Fines. The Board may assess a fine against any Owner for a violation of the Governing Documents in accordance with the Act. Before assessing a fine, the Board will give the Owner a written warning (a "*Warning Notice*") that (i) describes the violation, (ii) states the rule or provision of the Governing Documents that is violated, (iii) states that the Association may assess fines against the Owner if the violation continues and is not cured or if the Owner commits similar violations within one year after the day on which the Association gives the Owner the written warning or assesses a fine against the Owner for such violation, and (iv) if the violation is a continuing violation, states a time that is not less than forty-eight (48) hours after the day on which the written warning is given by which the Owner has to cure the violation. If an Owner disputes the assessment of a fine, the Owner may request an informal hearing to protest or dispute the fine within fourteen (14) days from the date of the notice of the fine. For any of the fines imposed against the offending Owner, the offending Owner will be barred from challenging the validity of the fine if the Owner does not deliver a written hearing request to the Board within fourteen (14) days of the notice of the fine. At any such informal hearing, the Board will make a reasonable determination, based on the information provided by the Owner and any other information available to the Board, whether to rescind, reduce, or waive the fine. To the extent not prohibited by law, the Board will have the right, from time to time to adopt, revise and modify a policy related to the issuance of fines in the event of a violation of the terms and conditions of this Declaration and the other Governing Documents. The fine policy will set forth the list of covenants for which fines may be issued from time to time and the amount of the fines. If the violation is not corrected, the Association may impose fines upon the violating Owner in accordance with the requirements of the Act.

7.2 Enforcement. The Board will 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, including: (a) whether to compromise a Claim made by or against the Board or the Association; and (b) whether to pursue a Claim for a fine. 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: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a 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 (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria. If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action and any inaction by the Board or the Association will not be deemed a waiver of any rights to take any enforcement action in the future. The Board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action.

ARTICLE VIII
Architectural Standards and Review Committee

8.1 Architectural Review Committee.

8.1.1 Organization. There is hereby established an Architectural Review Committee (herein sometimes referred to as the “*ARC*”). The ARC shall be composed of at least three (3) persons who will be appointed by the Board. Members of the ARC need not be Members of the Association. The ARC may from time to time designate any one of its members to act in its stead. All such persons serving on the ARC serve at the discretion of the Board. All decisions of the ARC are subject to review and modification by the Board except as herein otherwise expressly provided, including specifically the right of any Owner to appeal any decision of the committee to the Board as provided in the Bylaws. The decisions by the Board will be final. In the event of the death or resignation of any person serving on the ARC, the Board shall designate a successor or successors who will have all of the authority and power of his or their predecessor(s). Until such successor has been appointed, the remaining member or members have full authority to exercise all rights, duties and powers of the ARC. The ARC shall keep the Board informed as to its activities on a continuing basis and shall submit a written report to the Board regarding same semi-annually or as otherwise required by the Board.

8.1.2 Jurisdiction. The ARC has exclusive jurisdiction on behalf of the Association regarding: (a) implementation of all provisions of this Article VIII; and (b) promulgation of all Architectural Guidelines pertaining to the development and construction of Improvements within the Community.

8.1.3 Compensation. ARC may employ one or more architects, engineers, attorneys or other consultants to assist the ARC in carrying out its duties and/or to serve on the ARC. The Owner shall pay such consultants for services rendered. Members of the ARC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board.

8.2 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Unit or within or upon any part of the Community unless and until complete plans and specifications have been submitted to and approved in writing by the ARC, as applicable, as to compliance with applicable Architectural Review Criteria as set forth in Section 8.5. Two complete sets of plans and specifications must be submitted with each request for approval. Electronic copies of plans may be requested by the ARC. In addition to any other applicable requirements per applicable Architectural Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the ARC may reasonably require:

(a) the location upon the Unit or within the Community where the Regulated Modification will occur or be placed;

(b) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the Regulated Modification;

(c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;

(d) intended uses; and

(e) such other information, plans or specifications as may be requested or required by the ARC that in the sole opinion of the ARC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

8.3 Architectural Guidelines. The Board or the ARC, subject to Board approval, may, from time to time, effective immediately, adopt, modify, amend and repeal such reasonable Architectural Guidelines applicable to the Community including Units. Such authority includes, but is not limited to, the right to specify:

(a) the approved or preferred architects, landscape architects, designers, and general contractors for the development of Lots and the construction of homes within the Community;

(b) specific procedural guidelines for submission of requests for, and plans, specifications and other information and documentation necessary to obtain, ARC approval, and procedural requirements for the conducting of all activities necessary to accomplish same;

(c) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application;

(d) specific types of Regulated Modifications which may be commenced, constructed, erected or maintained upon any Unit or anywhere within the Community;

(e) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of a Regulated Modification;

(f) the ratio of building materials and acceptable exterior materials and colors used on structures and buildings, such as brick, stone, rock, and stucco;

(g) the number and minimum and maximum square footage of structures located on a Lot;

(h) the height of structures located on a Lot;

(i) the minimum and maximum square footage of structures on a Lot;

(j) the type of landscaping and fencing/walls that may be placed on a Lot;

- (k) minimum setbacks;
- (l) the location, height, and extent of fences, walls or other screening devices, walks, decks, patios or courtyards;
- (m) the orientation of buildings, structures, garages, driveways, and landscaping with respect to streets, walks, driveways and structures on adjacent properties; and
- (n) in general, all requirements reasonably deemed necessary to maximize compliance with Architectural Guidelines as set forth in Section 8.3.

8.4 Manner and Effect of Adoption of Architectural Guidelines. The Association shall make Architectural Guidelines available to Owners upon request. Architectural Guidelines may also be (but are not required to be) Recorded. Architectural Guidelines are of equal dignity with, and shall be enforceable in the same manner as, other provisions of this Declaration, provided: (a) such Architectural Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; (b) such Architectural Guidelines shall not be enacted retroactively except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Architectural Guidelines; and (c) such Architectural Guidelines shall not conflict with this Declaration.

8.5 Architectural Review Criteria. The ARC will evaluate all submitted applications for approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Community-Wide Standards as of the date of submission of an application and compliance with applicable Governing Documents, including this Declaration and applicable Architectural Guidelines and other Rules and Regulations. The ARC must use reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to (but the ARC is not bound by) similar applications for architectural approval and the decisions and actions of the ARC with regard thereto. The ARC shall be subject to the limitations and conditions placed upon the Board and the Association regarding Rules and Regulations as set forth in Section 6.1 of this Declaration regarding the adoption, amendment, modification, cancelation, limitation, creation of exceptions to, expansion, or enforcement of Architectural Guidelines and the review criteria.

8.6 Disapproval by ARC. It is understood and agreed by each Person having or acquiring an interest in the Community that the ARC will include aesthetic judgment in its decision making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The ARC may disapprove any request for approval for any reasons, including the following: (i) failure to comply with any applicable Architectural Review Criteria as set forth in Section 8.5; (ii) lack of sufficient information, plans or specifications as reasonably determined by the ARC to enable the ARC to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the ARC. In the event of disapproval, the ARC shall so notify the applicant in writing; and if

disapproval is based on lack of sufficient information, plans or specifications, then the ARC shall also notify applicant of the additional information, plans or specifications required.

8.7 Approval and Conditional Approval by ARC.

8.7.1 Manner. The ARC may fully approve any request for approval or approve any such request subject to compliance with conditions stated in a conditional approval. Conditions for approval may include, without limitation, requirements for modifications to plans and specifications such as upgrading or other changes as to materials or changes as to color or design or location, or requirements for addition of other Improvements such as sight barrier landscaping or other devices to screen a proposed Regulated Modification from Public View. A conditional approval is effective only upon full compliance with the stated condition(s). The ARC shall notify the applicant in writing of such approval (together with any qualifications or conditions of approval).

8.7.2 Effect. Except for fraud, misrepresentation, accident or mistake, the ARC's approval or conditional approval is final as to each Regulated Modification covered thereby, and may not be revoked or rescinded once given except as stated in Section 8.7.1 regarding conditional approvals. Except as to compliance with this Article VIII, the ARC's approval or conditional approval of an application does not constitute a waiver, modification or repeal of any covenant contained in this Declaration or other Governing Documents, or preclude by estoppel or otherwise full enforcement of all provisions hereof. The ARC's approval or conditional approval of an application may not be deemed a waiver of the right of the ARC to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

8.8 Submission and Response; Failure of ARC to Act.

8.8.1 Submission and Response. Applications for ARC approval are deemed submitted to the ARC only upon actual receipt. Applications will require plans prepared by a licensed architect related to structures and a landscape plan prepared by a landscape architect, unless otherwise agreed to by the ARC. All responses by the ARC shall be in writing, and are deemed given when delivered to, or when deposited in the United States mail, postage prepaid and addressed to, the applicant at the address specified in the application or the last known address of the applicant according to the records of the Association. The ARC has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as Members or Owners according to the books and records of the Association unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the ARC. Lessees/Occupants shall file applications or requests for variance in the name of the Owner, and such Owner shall either appoint the Lessee/Occupant as their agent in a letter to the ARC or join the application. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

8.8.2 Failure to Respond. In the event the ARC fails to approve, conditionally approve or disapprove an application or fails to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the application, then the

application shall be deemed denied.

8.9 Variances. In the event an Owner is denied approval for a Regulated Modification by the ARC, within ten (10) calendar days after denial the Owner may apply for a variance from the ARC's decision with the Board. Failure of an Owner to timely apply for a variance shall be deemed a waiver of the Owner's right to seek a variance. Applications for variances are deemed submitted to the Board only upon actual receipt. The Board may grant specific variances to Architectural Guidelines and to any architectural or use restrictions set forth in this Declaration upon specific findings of compliance with the grounds for granting of a variance as set forth hereafter. The Board may grant a variance only in writing and only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose of and to the extent of the specific variance expressly granted. The Board may grant a variance only upon specific findings that the variance is necessary due to unusual circumstances that are reasonably beyond the control of the applicant to mitigate or rectify, and that the granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Community or the scheme of development therein. The Board's decision to grant or deny an application for a variance is final. In the event the Board fails to approve, conditionally approve or deny a request for a variance or to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the request for a variance, then the request for a variance shall be deemed denied.

8.10 Implied Conditions of Approval.

8.10.1 Applicability. Unless expressly waived or modified by the ARC (or the Board as to variances) in writing, each and every approval or conditional approval of a Regulated Modification is subject to all provisions of this Article VIII whether or not stated in the approval or conditional approval.

8.10.2 Commencement and Completion of Work. Approval of an application for a Regulated Modification is effective for six (6) months from the date of approval or grant of a variance. If work on a Regulated Modification is not commenced within six (6) months after approval or conditional approval or grant of a variance, such approval or grant will become null and void and the Owner must submit a new application and obtain a new approval for the Regulated Modification. Prior approval of a Regulated Modification shall not bind the ARC or the Board or require the ARC or the Board to approve a re-submitted application for the same Regulated Modification. Upon commencement, the Owner must diligently prosecute and complete all work as soon thereafter as reasonably possible. The ARC (or the Board as to variances) is authorized to set specific schedules for completion of a Regulation Modification on a case-by-case basis and/or pursuant to applicable Architectural Guidelines.

8.10.3 New Construction Materials Required. Only new construction materials may be used in construction of any Regulated Modification except as otherwise approved by the ARC (such as the use of used brick). Any Regulated Modification shall be done in good and workmanlike manner using licensed contractors.

8.10.4 Compliance With Plans. All work on a Regulated Modification must proceed in strict compliance with: (i) the application and plans and specifications approved by the ARC (or variance granted by the Board), (ii) any and all conditions stated by the ARC (or the Board as to variances) in the approval, (iii) any and all applicable governmental laws, rules, regulations, ordinances, and building codes, and (iv) all applicable Governing Documents.

8.10.5 Permit Requirements. Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the ARC may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the ARC that no such permitting requirements exist.

8.10.6 Compliance With Laws and Governing Documents. Each applicant is solely responsible for insuring that (and nothing in the Governing Documents or any written decision of the ARC (or the Board as to variances) shall be construed as a covenant, representation, guaranty or warranty that) any proposed Regulated Modification will be in compliance with applicable governmental laws, ordinances or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents except as provided in Section 8.7.2.

8.11 Inspection Rights. Upon reasonable notice (oral or written), any member of the ARC or the Board, or their designated representatives, may enter a Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any Regulated Modification in compliance with the approved plans, specifications, information and documentation for same, and as to compliance with any applicable provisions of the Governing Documents.

8.12 Records. The ARC is not required to maintain records of any of its meetings. The ARC and the Board, however, must keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four years. The ARC must also maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon request.

8.13 Limitation of Liability. Neither Declarant, the Association, the Board, the ARC, nor their respective Related Parties, are liable to any Owner, Lessee, Occupant, or any of their Related Parties, or to any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the Regulated Modification.

8.14 Limitation of Applicability. None of the provisions of this Article VIII apply to any activities of Declarant, Declarant Affiliates or the Association and the Declarant, Declarant Affiliates or the Association will be liable for any actions or failure to act by the ARC.

8.15 Remedies. In the event of any violation of this Article VIII by an Owner, the failure of an Owner to obtain the required approval from the ARC, or the failure to comply with any approval of the ARC, including, but not limited to, making any improvement not approved by or inconsistent with the approval by the ARC, the Association may pursue any remedies available under this Declaration, at law or in equity, including injunctive relief. In such an event, the Owner will reimburse the Association for any and all costs incurred by the Association in pursuing such action. IN ADDITIONA AND WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ARCHITECTURAL GUIDELINES MAY PROVIDE FOR FINES AGAINST ANY OWNER AND UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ARC OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE ARC, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS. THE FINES MAY BE AN AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) PER VIOLATION WITH ADDITIONAL FINES NOT TO EXCEED TWO (\$2,000.00) ASSESSED ON A WEEKLY BASIS UNTIL SUCH TIME THE VIOLATION IS REMEDIED. DEPENDING ON AN OWNER'S RESPONSE TO A NOTICE OF VIOLATION, THE ASSOCIATION IN ITS SOLE AND ABSOLUTE DISCRETION MAY WAIVE THE LIENS ASSESSED AGAINST AN OWNER.

ARTICLE IX

Architectural and Use Restrictions

9.1 Signs.

9.1.1 Prohibited Signs. No signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Unit or within any Unit if in Public View, or within or upon any portion of the Community without the prior written consent of the ARC except as otherwise provided herein. The Board or ARC may remove or cause to be removed any sign, billboard, poster, banner, pennant or advertising device of any kind which is not approved as aforesaid or is otherwise prohibited under this Declaration or other Governing Documents and may dispose of same as debris without liability for trespass or otherwise. No sign is permitted that is vulgar, obscene or otherwise patently offensive to Persons of ordinary sensibilities. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained, to avoid unsightly appearance. The good faith determination of the Board or ARC as to any of the foregoing is final. No sign is permitted to be larger than four square feet. No sign may be illuminated. No Owner (or their tenants, guests or invitees) is permitted to place any sign on another Owner's Unit. Distressed, foreclosures and bankruptcy references are specifically prohibited.

9.1.2 Permitted Signs. To the extent required by law or in any event upon prior approval of the ARC, but subject to applicable provisions of Section 9.1.1 above, each Owner is permitted to place upon (and only upon) such Owner's Unit (or within a window of such Owner's Unit) or upon the lawn/landscaping immediately in front of such Owner's Unit, as determined by policies adopted by the Board (i) one sign advertising the particular Unit on which the sign is located for sale or for rent, (ii) "political signs" whereby such Owner is promoting a political candidate, party or issue, (iii) "school" signs at the discretion of the Board and (iv) security monitoring signs. The ARC may reasonably regulate the period(s) of time political signs may be permitted, and the number of permitted political signs and in relationship thereto their size and location. The Declarant may construct, place, install, and maintain such signs, billboards, banners, pennants, and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

9.2 Parking, Garages and Prohibited Vehicles

9.2.1 Parking/Garages. No garage will be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the ARC, nor may any portion of a garage be diverted to any use other than the parking of vehicles and other generally accepted and customary uses of a garage. Garages may not be used for general storage and must accommodate, in addition to any belongings, the number of automobiles designed for the garage (i.e., two-car garage will accommodate two automobiles). In particular, but not in limitation of the foregoing, no portion of any garage may be used as a residence or as living quarters. Notwithstanding the foregoing, however, Declarant may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Community by Declarant. All vehicles must be parked within the garage for a Unit or temporarily on the driveway servicing the Unit. Vehicles of guests will be parked within the garage or on the driveway of the Unit visited or within designated guest parking areas. The use of guest parking areas will be governed by Rules and Regulations adopted by the Board. No carports are allowed. Porte-cochère may be allowed. No front-yard parking or parking pads are allowed, meaning anywhere closer to the front property line of the lot than the front-most portion of the building. No bollards of any kind are allowed. Vehicles are not allowed to be parked on any portion of the landscaping including but not limited to grass, gravel, mulch, or other landscaped areas.

9.2.2 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors (except those of a size to be parked in a home's garage), vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers will be parked only in enclosed garages or areas located or screened so as to be concealed from Public View, such as behind a fence. Resident's business vehicles in excess of 3/4 ton trucks will not be parked in front of Units overnight, nor will any vehicle be repaired, disassembled, or reassembled on any garage apron, public street, or designated guest parking in the Project. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses will not be permitted on the Community except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Community must be

removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle will be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Community during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Bylaws.

9.3 Occupants Bound. All provisions of this Declaration or any other Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners will also apply to all Related Parties of any Owner. Each Owner will comply, and will cause all of such Owner's Related Parties to comply, with this Declaration and the other Governing Documents, and will be responsible for all violations thereof and/or all damage or loss to the Association caused by such Occupants, notwithstanding the fact that such Related Parties are fully liable and may be sanctioned for any violation of this Declaration or the other Governing Documents. Any failure in compliance will be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the other Governing Documents.

9.4 Animals and Pets.

9.4.1 Restrictions. No animals, livestock, or poultry of any kind will be raised, bred, or kept on any portion of the Community, except that dogs, cats, or other usual and common household pets, not to exceed the number as may be permitted in a Unit pursuant to the Laws, codes, and ordinances of the Municipal Authority. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health or safety of Persons, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any portion of the Community will be removed upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. No pets will be kept, bred, or maintained for any commercial purpose. Dogs will at all times whenever they are outside a Unit be confined on a leash held by a responsible Person or attached to a secured pole or other fixed Improvement. Chickens may be allowed with written approval from the ARC. No roosters. If any animal that is kept on any portion of the Community creates excessive noise, the Board has the right to request that the animal is removed by the owner.

9.5 Quiet Enjoyment; Nuisances. No portion of the Community will be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor will any substance, thing, or material be kept upon any portion of the Community that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might unreasonably disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. Noise typically associated with ball fields, swimming pools, hot tubs, playgrounds, and recreational centers, normal amounts of dogs barking and children playing is not prohibited.

No noxious, illegal, or offensive activity will be carried on upon any portion of the Community, nor will anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any portion of the Community. There will not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. No outside burning of wood, leaves, trash, garbage or household refuse will be permitted within the Community. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, will be installed or operated on any Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Community.

9.6 Unsightly or Unkempt Conditions. It will be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, will not be pursued or undertaken on any part of the Community. Unit patios and balconies will not be used as general storage areas, for the hanging and drying of laundry, or for decorative items visible from adjoining Units or public streets. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work will be permitted provided such activities are not conducted on a regular or frequent basis and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours. The lots, buildings, driveways, fencing, landscaping, and any other objects connected to or on the property are to be properly and neatly maintained at all times. This applies also to empty lots as well. Excessive weeds, construction trash and debris are to be removed and properly disposed of. Such maintenance is the responsibility of the lot owner.

9.6.1 Yard Conditions. It will be the responsibility of each Owner to maintain their yard in a clean, well kept, and healthy condition. This includes but is not limited to regular grass trimming and mowing, weeding, bush and tree trimming, removing and replacing any dead vegetation, etc. This also includes any city right of way such as the curb, gutter, park strip, and sidewalk.

9.7 Antenna and Satellite Dish Systems. No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind will be placed, allowed or maintained upon a Visible Location unless a Visible Location is the only location on a Unit where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Unit where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the ARC, which approval will not be unreasonably withheld. The ARC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "*Telecommunications Act*"), without ARC approval: (a) no direct broadcast

satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Unit, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the Residence on the Unit, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof. This Section 9.7 will be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Section 9.7, will be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("**OTARD**") promulgated under the Telecommunications Act or other Rules and Regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the ARC to act reasonably, or respond promptly, such obligation will be deemed a part of the ARC's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically will be deemed deleted, and Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

9.8 Clotheslines, Garbage Cans, Tanks, Etc. Subject to applicable Laws, no clotheslines will be erected or installed in a Visible Location and no clothing, linens or other material will be aired or dried in a Visible Location. All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Units will be located or screened so as to be concealed from Public View. Unless a dumpster is provided by the Association, the Owners will place all rubbish, trash, and garbage in rat-proof garbage cans or containers, which will be stored inside each Unit (such as in the garage), and will cause such garbage cans or containers to be placed on the curb or other area for pick-up/emptying when the garbage is scheduled to be picked-up and emptied; garbage cans are to be returned to the "inside" by 6:00 pm the day of trash pick-up. In the event the Alpine City, Utah County or the applicable governmental entity will only pick-up and empty dumpsters servicing the Community, each Owner will cause any rubbish, trash and garbage to be regularly deposited in the dumpsters servicing the Community. Trash collection and disposal will be governed by Rules and Regulations established by the Association. BBQ grills should be located or screened as to be concealed from Public View.

9.9 Subdivision of Unit and Time Sharing. No Unit will be subdivided or its boundary lines changed except with the prior written approval of the Board, which may be granted or withheld in the Board's sole and absolute discretion. Declarant, however, hereby expressly reserves the right to replat any Unit or Units owned by Declarant without Board approval and may amend or modify the Plat for the Community. By purchasing a Unit, each Owner hereby irrevocably appoints Declarant as its attorney-in-fact coupled with an interest, which shall be vested with an interest, to sign any Plat on behalf of such Owner in the event such Owner's signature or consent is required. Upon request by Declarant, each Owner will sign a power of attorney or such other documents to facilitate the amendment to the Plat. Each Owner agrees that it shall not oppose any amendment to the Plat or any replatting of the Community by Declarant. No division, boundary line change, or replatting will violate applicable subdivision or zoning regulations. No Unit will be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years, except that Declarant hereby reserves the right for Declarant and its assigns to operate such a program with respect to Units which it owns.

9.10 Firearms. The discharge of firearms within the Community is prohibited. The term “firearms” includes “B-B” guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association will not be obligated to take action to enforce this Section.

9.11 Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other ground or surface waters within the Community will be installed, constructed or operated within the Community. All sprinkler and irrigation systems serving Units will draw upon public water supplies only and will be subject to approval in accordance with Article IX of this Declaration. Private irrigation wells are prohibited within the Community. This Section 9.11 will not apply to Declarant or its activities within the Community.

9.12 Tents, Mobile Homes and Temporary Structures. Except as may be permitted by Declarant or the ARC during initial construction within the Community, no tent, shack, mobile home, storage container, or other structure of a temporary nature will be placed upon a Unit or any part of the Community. The foregoing prohibition will not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Unit, provided it receives the prior approval of the ARC, as appropriate, in accordance with Article IX hereof. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

9.13 Drainage and Septic Systems. Catch basins, drainage swales, and drainage areas are for the purpose of natural flow of water only. No obstructions or debris will be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Owner may interfere with the established drainage pattern over any part of the Community unless adequate provision is made for property drainage and is approved in advance by the ARC. Established drainage will mean and refer to the drainage which exists at the time the overall grading and development of the Community is completed by Declarant. Owners are required to retain their own water on site, except for incidental water drainage onto public streets. Owners shall ensure that no drainage is spilled onto neighboring parcels. Septic tanks and drain fields are prohibited within the Community. No Owner or its Related Parties will dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm drain, drainage ditch, stream, pond or lake within the Community.

9.14 Tree Removal. No trees will be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article IX of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as such committee may determine necessary in its sole discretion, to mitigate the damage. It is the intent to keep all existing trees from the time the property is developed. Existing trees and vegetation can be removed if they interfere with the construction of a new home. Removal of trees must be approved by the ARC.

9.15 Mailboxes. No free-standing mailbox shall be constructed or installed on any lot. There is a community mailbox that is provided.

9.16 Sight Distance at Intersections. All Property located at street intersections will be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting will be placed or permitted to remain where it would create a traffic or sight problem.

9.17 Air Conditioning Units. There will not be installed or operated in any Unit any window mounted air-conditioning or heating units.

9.18 Lighting. Except for traditional holiday decorative lights located on the exterior roof line or around windows of a Residence, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed (subject to weather conditions), all exterior lights must be approved in accordance with Article IX of this Declaration. No holiday decorative lights are permitted on the roof of any Residence or on the landscaping or lawn in front of or adjacent to any Unit without the prior approval of the ARC. Permanent holiday lighting is not allowed.

9.19 Artificial Vegetation, Exterior Sculpture, and Similar Items. See Architectural Guidelines.

9.20 Orchards and Gardens. Orchards and gardens, meaning an orchard or garden with the purpose of growing fruit and vegetables, are permitted but cannot be located anywhere closer to the front of the property line of the lot than the front-most portion of the dwelling unit. Any gardens and orchards should be located or screened as to be concealed from Public View, such as behind a fence.

9.21 Energy Conservation Equipment. To the extent not prohibited by applicable Laws, no solar energy collector panels or attendant hardware or other energy conservation equipment will be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article IX hereof. No solar energy collector panels may be constructed on a roof if they are visible from the ground level, extend above the roofline or have panel frames, support brackets, piping and/or conduit that has a color or texture that is different than the roof materials. No windmills, wind generators or other apparatus for generating power from the wind will be erected or installed on any Unit unless approved pursuant to Article IX. Any solar energy collector panels and attendant hardware and other equipment will be deemed the personal property of the Owner. The Owner will be responsible for and will indemnify and hold the Association and the Declarant harmless from any damage, harm, or loss (including any and all costs and expenses and attorneys' fees and legal related costs) caused to the Unit or any personal property as a result of or in any way resulting from or associated with the installation, removal, use or operation of such system, and will be responsible for the maintenance, repair, and replacement of such solar energy collection system. In the event the Association incurs any additional costs associated with or as a result of solar energy collector panels or system, the Owner will reimburse the Association for such costs. The Association may adopt reasonable Rules and Regulations regarding solar energy systems on the roof of Residences to the extent compliant with applicable Laws and the

Act.

9.22 Chimneys. All wood, pellet or coal burning fireplaces, stoves, chimneys or similar devices to the extent authorized herein will be equipped with appropriate spark screens as approved by the ARC and the Municipal Authorities and will comply with all applicable Laws.

9.23 Use.

9.23.1 General. The Community will be used only for detached single family residential homes and related purposes. The Association may impose more stringent use prohibitions and standards within the Community. The Association, acting through its Board, will have standing and the power to enforce such standards. Except for uses by Declarant or the Association, as described in the preceding sentences, each and every Unit is hereby restricted to residential use only. All Units will comply with the applicable zoning and land use Laws, including restrictions that may restrict the use as a single-family dwelling, as such term may be defined by the applicable ordinances of the Municipal Authority. Notwithstanding the above or anything contrary in this Declaration, the leasing of Units will not be deemed a business or commercial use and multiple Units may be leased to a business to facilitate a corporate retreat.

9.23.2 No Business, Professional, Commercial or Manufacturing Use. No business, professional, commercial or manufacturing use may be made of any Unit or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the Unit as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, an Owner or Owner's Related Parties residing in a Unit may conduct business activities within the Unit so long as:

(a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit;

(b) the business activity conforms to all zoning requirements for the Unit;

(c) the business activity does not involve Persons coming onto the Community or the Unit or door-to-door solicitation of Residents of the Community or the Community;

(d) the business activity does not involve shipping, truck delivery or pickup, and transportation of goods, materials, or supplies of any kind;

(e) the business activity is consistent with the residential character of the Community and the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Community or the Community, as may be determined in the sole discretion of the Board;

(f) any and all vehicles associated with the business, including the vehicle of the Owner or Occupant and all employees, servants and contractors are parked within

the garage or on the driveway and no vehicles are parked on any public or private street or any guest or visitor parking provided within the Community.

9.23.3 Residential Use Only. Without limitation of the foregoing, as used herein the term “residential use” will be construed to prohibit the use of any Unit or the Residence thereon for operation of a boarding or rooming house or residence for transients, or the use of any garage or permitted outbuilding as an apartment or residential living quarters.

9.23.4 Maximum Occupancy. In addition to the limitations above set forth, in no event may a Unit be occupied by more Persons than permitted by applicable law.

9.23.5 Additional Standards and Regulations. The Association, acting through the Board, will have authority to make and to enforce additional Rules and Regulations governing the use of Units within the Community. Such Rules and Regulations will be binding upon all Owners and their Related Parties until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of both Members representing a majority of the total Class “A” votes in the Association and by the Class “B” Member, so long as such membership will exist.

9.22 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels will be permitted on any part of the Community except that up to ten (10) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association will be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. On-site storage of gasoline, heating or other fuels greater than ten (10) gallons may be allowed with prior written approval from the ARC.

9.23 Golf Carts/ATVs/Motorbikes. No gasoline-powered golf carts will be operated within the Community. All golf carts will be powered by electricity or by similar non-combustion means. All motorcycles, trail bikes, three-wheel and four-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established streets and parking areas.

9.24 Leasing of Units/Restriction on Rentals. The leasing of Units will be subject to any applicable Laws, including, the Act and the ordinances of the Municipal Authority. Subject to the foregoing, no short-term, daily, nightly, or weekly rentals are permitted. The minimum lease agreement shall be no less than six (6) months. All Leases will be in writing. The Lessee will be subject to the terms and conditions of this Declaration and the other Governing Documents. The Board may adopt reasonable rules regulating leasing and subleasing. Notwithstanding the above, an Owner and its Parcel will be exempt from any restrictions on leasing as follows: (a) if the Owner is in the military, the Owner may lease its Unit for the period of the Owner’s deployment, (b) any lease to the Owner’s parent, child, or sibling, (c) if the Owner has been relocated by its employer for a period of no less than two (2) years, or (d) if the Owner is a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for (i) the estate of a current Owner or Resident of the Unit, or (ii) the parent, child, or sibling of the current Owner or Resident. The Association will create a procedure, by rule or resolution, to determine and track the number of rentals and Units that are subject to the exclusions as described in the preceding sentences and to ensure consistent administration and enforcement of the rental restrictions.

9.25 Laws and Ordinances. Every Owner and such Owner's Related Parties, will comply with all Laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Unit and the Community and the Community, including any and all applicable zoning and land use Laws and ordinances, and any violation thereof may be considered a violation of this Declaration; provided, the Board will have no obligation to take action to enforce such Laws, statutes, ordinances and rules.

9.26 Unoccupied Residences. The Owner of a Unit with an unoccupied Residence, including any Mortgagee in possession and any Mortgagee obtaining title to a Unit by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but without limitation: (i) proper maintenance of the Unit and all improvements thereon; (ii) securing of the unoccupied Residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use; and (iii) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkempt appearance.

9.27 Maintenance of Utilities Required. All utility services intended to be provided to each Unit as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a Residence is occupied.

ARTICLE X

General Provisions

10.1 Term. The covenants and restrictions of this Declaration will run with the land and bind the Community, and will inure to the benefit of and will be enforceable by the Association, each Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which time they will be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been Recorded within the twelve month period preceding the renewal of this Declaration, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration will be modified or terminated as specified therein.

10.2 Amendment. During the Period of Administrative Control, Declarant, acting alone, will have the sole right to amend this Declaration. After the Period of Administrative Control, this Declaration may be amended or terminated by the affirmative vote or written consent, or any combination thereof, of Owners of Units representing sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above to the extent not prohibited or restricted by applicable law, such as Section 57-8a-104 of the Act, after the Period of Administrative Control, any amendment concerning lot boundaries, any Owner's voting rights will require the affirmative vote or written consent, or any combination thereof of Owners of Units representing seventy-five (75%) of the total votes in the Association, including the vote of the affected Owner. Notwithstanding the above, the percentage of votes necessary to amend a specific clause will not be less than the prescribed percentage of affirmative votes required for action to be taken under

that clause. Any amendment or termination of this Declaration must be Recorded to be effective.

If an Owner consents to any amendment to or termination of this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

10.3 Easements for Utilities, Drainage, Etc. There is hereby reserved unto Declarant (during the Period of Administrative Control), the Association, and the designees of each (which may include, without limitation, Alpine City, Utah, and any water district, municipal utility district or other utility), blanket easements upon, across, over, and under all of the Community, excluding the footprint of any buildings or structures, for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems (including altering drainage and water flow), levees, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement will not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit will be made only after reasonable notice to the Owner or Occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier, easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community, except as may be approved by the Board or as provided by Declarant. The easements provided for in this Article X will in no way adversely affect any other Recorded easement on the Community.

10.4 Declarant Easement. There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under and across, and for the right to enter and remain upon, all portions of the Community (including, but not limited to any private streets) for the purpose of enabling Declarant, and Declarant's Related Parties and their respective invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder, and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Community owned by Declarant. This easement will be in favor of Declarant and its Related Parties and appurtenance to portions of the Community owned by Declarant. The rights of access established in this Section will be exercised so as to reasonably minimize interference with the quiet enjoyment of a Unit by its Owner or any Occupant.

10.5 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over the entire Community (except the footprint of any Improvements or structures) for the purpose of enabling the Association and its contractors and Related Parties to implement the provisions of this Declaration. The rights of access established in

this Section will be exercised so as to reasonably minimize interference with the quiet enjoyment of a Unit by its Owner and any Occupant.

10.6 Utility Cross Easements. Each Unit will be subject to and benefit from easements under, above and through the Unit and adjoining Units for utilities, such as, culinary water, sanitary sewer, electricity, natural gas, air conditioner lines, ventilation lines, telecommunication lines, etc. to the extent necessary for the proper construction and operation of the Units in accordance with the design and architectural style of such Units and the Community. The Association will provide prior written notice to the Owner of any Unit that is subject to any work related to the installation, placement, or maintenance of any such utilities. The Association will use good faith efforts to minimize any disturbance to the Owner's use and enjoyment of the Owner's Unit related to the installation, placement, maintenance, or removal of such utilities.

10.7 Encroachment Easements. Each Unit will be subject to and benefit from (a) an easement for encroachment of eaves, roof overhangs and other architectural and design features that may encroach over the vertical plane of any Unit; (b) an easement for storm water drainage from the roof and rain gutter from one Unit to another Unit and the natural drainage of water from Unit to Unit in accordance with the architectural design of the Units; and (c) an easement within party walls for utilities, electrical cables, telecommunication cables and lines, and other similar improvements that are commonly located in interior and/or exterior walls.

10.8 Access Control. The Association, or its duly delegated representative, may operate an access control system for the Community or any portion of the Community.

10.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will in no way affect any other provisions, which will remain in full force and effect.

10.10 Right of Entry. In addition to any other rights set forth herein, the Association will have the right, but not the obligation, to enter into any Unit for emergency, security, and safety reasons, which right may be exercised by the Board, or the Association's officers, agents, employees, or managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry will only be during reasonable hours and after notice to the Owner consistent with the terms and conditions of this Declaration.

10.11 Perpetuities. Pursuant to U.C.A. § 57-8a-108, the rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of this Declaration. If any of the covenants, conditions, restrictions or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of King Charles III, King of England; provided, however, to the extent applicable, this Declaration is subject to the Utah Statutory Rule Against Perpetuities (U.C.A. §75-2-1201, et. seq.). The covenants, conditions, restrictions, or other provisions of this Declaration will continue the longest period permitted by applicable law.

10.12 Litigation. No judicial or administrative proceeding will be commenced or prosecuted by the Association unless approved by Declarant (if during the Period of Administrative Control) and a vote of seventy-five percent (75%) of the Class "A" Members. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of fines, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

10.13 Cumulative Effect; Conflict. In the event of a conflict between or among this Declaration and the Governing Documents, the more restrictive covenants and restrictions will govern.

10.14 Use of the Words "Cherrypoint Estates". No Person will use the term "Cherrypoint Estates", "Cherrypoint" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, any Owner may use the term "Cherrypoint" in printed or promotional matter where such term is used solely to specify that their particular Property is located within the "Cherrypoint Estates" development. The Association will be entitled to use the term "Cherrypoint" in its name.

10.15 Limitation of Liability; Indemnification.

10.15.1 In General. To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (U.C.A. §16-6a-101 et. seq.), the Association will indemnify the following Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in U.C.A. §16-6a-102(37)), including but not limited to, attorney's fees, witness fees (including expert witness fees), costs, and litigation related expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement of any such proceeding: (i) every director and officer of the Association, (ii) every member of committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association. The Board further may elect to indemnify any agent of the Association. Any Person described in phrases (i), (ii), (iii) and (iv) of the first sentence of this Section will be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association will pay or reimburse reasonable expenses incurred by any such Person who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Section 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Person in question to make the repayment referred to in such Section. This right of indemnification will be in addition to, and not exclusive of, all other rights to which the Person to be indemnified may be entitled at law or otherwise.

10.15.2 Non-Liability of Officials. To the fullest extent permitted by law, none of

the following Persons (the “*Released Persons*”) will be liable to any Member, Owner, Lessee, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or Claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties: (i) every director and officer of the Association, (ii) every member of committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association. Each Owner, Occupant and other Person having any interest in the Community or entering upon or using any portion of the Community is deemed to acknowledge and accept the following:

(a) None of the Released Persons will be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Community. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Community, including but not limited to, any recreational facilities upon or within the Community.

(b) None of the Released Persons will be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Community. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Community.

(c) No provision of this Declaration or any other Governing Document will be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person, even if funds of the Association are used for such a purpose.

10.15.3 Liability Arising From Conduct of Owners. Each Owner, Lessee, Occupant, and their respective Related Parties hereby indemnifies, holds harmless, and agrees to defend (with counsel reasonably acceptable to the indemnified party) the Declarant, the Association, and their Related Parties from and against all Claims and all other legal actions caused through the willful or negligent act or omission of an Owner, a Lessee, an Occupant, or their respective Related Parties.

10.15.4 Subsequent Statutory Authority. If any applicable law, whether state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 10.15, then liability will be limited or expanded to the fullest extent permitted by such applicable law.

10.15.5 No Impairment. Any repeal, amendment or modification of this Section 10.15 may not adversely affect any rights or protection existing at the time of the amendment.

10.16 Request for Payoff Information. An Owner may request payoff information from the Association needed in connection with the financing, refinancing, or closing of an Owner’s

Parcel by: (a) providing written notice to the designated manager for the Association requesting the payoff information, which notice must contain (i) the name, telephone number, and address of the Person making the request, and (ii) the email address for delivery of the payoff information, and (b) a written consent for the release of the payoff information, which identifies the Person requesting the information as a Person to whom the payoff information may be released, and signed and dated by the Owner of the Parcel for which the payoff information is requested. The Association may charge a fee associated with providing the payoff information, which fee will not exceed the amount permitted under applicable law and will be subject to any requirements set forth in applicable law.

10.17 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Unit, such Owner will give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. A “*transfer*” will include the following: (a) a conveyance, sale, or other transfer of a lot by deed, (b) the granting of a life estate in a Unit, (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period. Until such written notice is received by the Association, the transferor will continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder notwithstanding the transfer of title to the Unit. No Owner can sell or transfer title of his or her lot, unless to an entity owned by the Owner, within 24 months from the purchase of the lot. Exceptions may be given by the Board for good reason.

10.18 Notices. Any notice provided under this Declaration will be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices will be sent. Such notices, demands or declarations will be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice by electronic means, including text message, email, or through the Association’s website; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

10.19 Security. The Association will in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project that the Association may have an obligation to maintain. The Association will not be held liable for any loss, theft, harm, 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. By purchasing a Unit in this Association and/or being a member of the Association,

Owners and Occupants agree that the Association and the Board 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.

ARTICLE XI
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Article XI apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

11.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, therefore becoming an “*Eligible Holder*”), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of charges owed on a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration or other Governing Documents relating to such Unit or the Owner or Occupant thereof which is not cured within sixty (60) days;

(c) any proposed action which would require the consent of a specified percentage of Eligible Holders.

11.2 Notice to Association. Upon request, each Owner will be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner’s Unit.

11.3 Applicability of Article XI. Nothing contained in this Article XI will be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or Utah law for any of the acts set out in this Article XI.

11.4 Mortgagee Rights. The Board may condition the effectiveness of an Owner’s actions specified in this Declaration on the approval of a specified number or percentage of Mortgagees holding a security interest in the Units within the Project; or condition the effectiveness of the Association actions specified in this Declaration on the approval of a specified number or percentage of Mortgagee’s that have extended credit to the Association. Notwithstanding the foregoing, such action or condition may not: (a) deny or delegate the Owners’ or the Board’s control over the Association’s general administrative affairs or (b) prevent the Association or Board from commencing, intervening in, or settling any litigation or proceeding.

If a Mortgagee's consent is required to amend this Declaration or the Bylaws or for another Association action, such consent is presumed to have been granted if: (a) the Association sends written notice of the proposed amendment or action by certified or registered mail to the Mortgagee's address stated in a Recorded document evidencing the security interest; and (b) the Person designated in a notice to receive the Mortgagee's response does not receive a response within sixty (60) days after the Association sends the notice as provided herein. If a Mortgagee's address for receiving notice is not stated in a Recorded document evidencing the security interest, the Association will use reasonable efforts to find a mailing address for the Mortgagee and may send the notice to any address obtained through such efforts. If a Mortgagee responds in writing within sixty (60) days after the Association sends notice as provided above that the security interest has been assigned or conveyed to another Person, the Association will: (i) send a notice to the Person assigned or conveyed the security interest at the address provided by the security holder in the security holder's response; or (ii) if no address is provided: (1) use reasonable efforts to find a mailing address for the Person assigned or conveyed the security interest; and (2) send notice by certified or registered mail to the Person at the address that the Association finds. The Association may not presume the Mortgagee's consent is obtained unless the Person designated in a notice to receive the response from the Person assigned or conveyed the security interest does not receive a response within sixty (60) days after the Association sends the notice.

ARTICLE XII **Declarant's Rights**

12.1 Transfer of Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the other Governing Documents may be transferred to other Persons, provided that the transfer will not reduce an obligation nor enlarge a right beyond that contained herein or in the other Governing Document, as applicable, and provided further, no such transfer will be effective unless it is in a written instrument signed by Declarant and duly Recorded in the public records of Utah County, Utah.

12.2 Application to Declarant. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration will be construed or deemed to limit or prohibit any act of Declarant, Declarant's Related Parties or contractors, or parties designated by Declarant in connection with the construction, completion, sale or leasing of the Units or the Community (whether or not annexed under this Declaration). Without limiting the generality of this Article XII in any way, and notwithstanding anything to the contrary contained in this Declaration, Declarant is expressly exempted from the provisions of this Declaration requiring submission to or authorizations by the ARC.

12.3 No Recordation. So long as Declarant continues to have rights under this paragraph, no Person will Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent thereto, and any attempted Recordation without compliance herewith will result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant.

12.4 Other Special Declarant Rights. Declarant reserves the following rights, among others (the "*Special Declarant Rights*"), and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

(a) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Administrative Control;

(b) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;

(c) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;

(d) the right to make and adopt Rules and Regulations without being subject to the requirements of Utah Code § 57-8a-217;

(e) the right to replat or amend, modify, or supplement the Plat for the Community\). In the event an Owner's consent is legally required to effectuate any of the foregoing, the Owners hereby appoint Declarant as their attorney-in-fact, which shall be coupled with an interest, to consent and approve such actions. The Owner's agree to cooperate and not oppose such actions and to sign such instruments to confirm the above.

12.5 Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Administrative Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XII and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.6 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules and Regulations that interferes with or diminishes any of Declarant's right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.7 Transfer of Special Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person. Such transfer, conveyance, or assignment shall be effective upon Recording in the office of the Utah County Recorder.

ARTICLE XIII

HUD APPROVAL

13.1 HUD and FHA Project Approval. The Declarant and the Association desire that the Project will become and remain an approved project by the U.S. Department of Housing and Urban Development ("**HUD**") and the Federal Housing Administration ("**FHA**"). It is acknowledged that the requirements for approval by HUD and FHA may change over time. In the event of any conflict between the terms and conditions of this Declaration and the Governing Documents and the HUD and/or FHA approval guidelines for the Project, the terms and conditions of this Declaration and the Governing Documents will be modified to be in compliance with the then existing requirements of FHA and HUD subject to the Act and any applicable Laws. In the event of any conflict between the Act (and any applicable Laws), the Declaration, and any HUD and/or FHA approval guidelines, the Act (and any applicable Laws) will control and govern. Notwithstanding the above, the Declarant during the Period of Administrative Control or at least sixty-seven percent (67%) of the Owners at a meeting of the Association may modify this provision whereby the Declaration and other Government Documents will no longer be subject to the then existing requirements of FHA and HUD.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Declarant has executed this Declaration this 22ND day of JANUARY, 2024.

ONSEN DEVELOPMENT, INC.,
a Utah corporation

By: [Signature]
Nathan S. Heaps, President

STATE OF UTAH)
) ss.
County of Utah

On the 22nd day of January, 2024, before me Tom Harper, a notary public, personally appeared Nathan S. Heaps, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as President of Onsen Development, Inc.

[Signature]
Notary Public

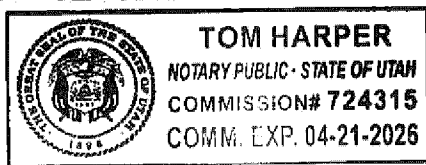


EXHIBIT "A"

Legal Description

All of, Plat "A", Cherrypoint Estates Subdivision, Alpine, Utah county, Utah, according to the official plat thereof on file in the Office of Recorder of Utah County, Utah.

EXHIBIT "B"**Legal Description of Overall Boundary – Including Additional Land**

Beginning at a point located South 0°47'28" West along quarter section line 2134.21 feet from the North Quarter Corner of Section 18, Township 4 South, Range 2 East, Salt Lake Base and Meridian;

thence along the southerly boundary of Alpine Cove Plat "A" the following two courses and distances: 1) North 78°34'41" East 602.04 feet, and 2) thence North 71°18'41" East 145.68 feet; thence along the westerly boundary of Alpine Cove Plat "E" Amended the following two courses and distances: 1) South 0°47'41" West 691.91 feet, and 2) North 89°40'32" East 7.63 feet; thence South 49°19'30" West 20.62 feet; thence South 21°18'31" East 47.50 feet; thence South 25°15'00" East 31.03 feet; thence South 2°17'36" West 12.70 feet; thence South 23°17'48" West 76.73 feet; thence South 11°09'31" West 54.71 feet; thence South 35°02'09" West 85.99 feet; thence along the boundary of Lot 29 Alpine Estates Plat "A" the following two courses and distances: 1) North 53°59'55" West 177.50 feet, and 2) South 49°19'30" West 123.15 feet; thence North 57°48'26" West 88.56 feet; thence South 89°42'21" West 63.80 feet; thence North 0°17'39" West 32.10 feet; thence South 89°37'21" West 309.17 feet; thence North 61°30'34" West 37.31 feet; thence North 28°19'58" East 140.60 feet; thence along the arc of a 500.00 foot radius curve to the left through a central angle of 5°38'47" for 49.27 feet (chord bears North 17°13'40" East 49.25 feet); thence South 89°42'02" West 20.95 feet; thence North 0°47'28" East along quarter section line 529.48 feet to the point of beginning.

Area = 13.764 Acres

EXHIBIT "C"
[Bylaws]

Bylaws
of
Cherry Point Estates Owners Association, Inc.

As Adopted

January 22, 2024

**Bylaws of
Cherrypoint Estates Owners Association, Inc.**

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**Bylaws of
Cherrypoint Estates Owners Association, Inc.**

ARTICLE I – PURPOSES

Section 1.01 Purpose. This corporation is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, as set forth in the corporations Articles of Incorporation, including, without limitation, the operation and management of the elements of a neighborhood known as Cherrypoint Estates.

ARTICLE II – OFFICES

Section 2.01 Offices. The principal office of the corporation may be located at any place, either in or outside the State of Utah, as designated in the corporation’s most current Annual Report filed with the Utah Division of Corporations and Commercial Code. The corporation may have such other offices, either in or outside the State of Utah, as the board of directors may designate or as the business of the corporation may require from time to time. The corporation will maintain at its principal office a copy of certain records, as specified in Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act. The initial address of the corporation’s principal office will be 5513 West 11000 North, #301, Highland, Utah 84003.

Section 2.02 Registered Office. The registered office of the corporation, required by Section 16-6a-501 of the Utah Revised Nonprofit Corporation Act, will be located in the State of Utah and may be, but need not be, identical with the corporation’s principal office (if located in the State of Utah). The address of the registered office may be changed from time to time.

Section 2.03 Definitions. The words used in these Bylaws will have the same meaning as set forth in the Declaration of Covenants, Conditions, Restrictions, and Easements for Cherrypoint Estates filed simultaneously in the official records of Utah County, Utah as instrument number _____ (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the “**Declaration**”), unless the context indicates otherwise.

ARTICLE III – MEMBERS

Section 3.01 Membership. The qualifications, privileges and obligations of membership in the Association will be as set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 3.02 Place of Meetings. Meetings of the Association will be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3.03 Annual Meetings. Annual meetings of the Association will be held during the month of January or February in each year on a date and at a time set by the Board of Directors.

Section 3.04 Special Meetings of Membership. The President may call special meetings. In addition, it will be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least ten percent (10%) of the total votes of the Association. The notice of any special meeting will state the date, time, and place of such meeting and the purpose thereof. No business will be transacted at a special meeting except as stated in the notice.

Section 3.05 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meetings of the Members will be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called will be stated in the notice. No business will be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting will be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage thereon prepaid.

Notices for any Board meetings during the period after the Period of Administrative Review will be provided pursuant to Utah Code Ann. Section 57-8a-225 or any replacement statute.

Section 3.06 Waiver of Notice. Waiver of notice of a meeting of the Members will be

deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or its proxy will be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting will also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 3.07 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are represented at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting will be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 3.08 Voting. The voting rights of the Members will be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 3.09 Proxies. At all meetings of the Members, Members may vote in person or by proxy and, in the case of a Member which is a corporation, partnership or other legal entity, such Member will vote by proxy. Every proxy will be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Except as otherwise specifically provided in the proxy, a proxy will be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy will prevail, or if dated as of the same date, both will be deemed invalid. No proxy will be valid more than eleven (11) months after its execution unless otherwise provided in the proxy. Every proxy will be revocable and will automatically cease upon conveyance of the Member's parcel. Proxies will be valid even if presented in facsimile form.

Section 3.10 Majority. As used in these Bylaws, the term "majority" will mean those votes, owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

Section 3.11 Quorum. Those Owners present, either in person or by proxy, at a meeting will constitute a quorum for the adoption of decisions.

Section 3.12 Conduct of Meetings. The President will preside at all meetings of the Association, and the Secretary or designated managing agent will keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.13 Action Without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and any such consent will have the same force and effect as a unanimous vote of the Members.

ARTICLE IV – BOARD OF DIRECTORS

Section 4.01 General Powers. The business and affairs of the corporation will be managed under the direction of its board of directors, each of whom will have one (1) vote. Directors need not be Members of the Association.

Section 4.02 Period of Administrative Control. Notwithstanding anything to the contrary contained in these Bylaws, the Class "B" Member will be entitled to appoint all members of the Board of Directors during the Period of Administrative Control as set forth in the Declaration.

Section 4.03 Nomination of Directors. Commencing with the election of the first Board of Directors to be elected by the Members, nominations for election to the Board of Directors may be made by any Member. Nominations will also be permitted from the floor. All candidates will have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 4.04 Number and Term of Office. Notwithstanding any other provisions contained herein:

- (a) The initial Board of Directors will consist of three (3) directors, as identified

in the Articles of Incorporation, who will serve from the date of incorporation of the Association until the annual meeting of the membership after the expiration of the Period of Administrative Control.

(b) At the first annual meeting of the membership after termination of the Period of Administrative Control pursuant to Section 2 of this Article, two (2) directors will be elected by the Class "A" Members. The Class "B" Member will be entitled to decide which director seats will be up for election. The two (2) directors so elected will serve for a term of two (2) years. The remaining director will serve for a term of one (1) year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor will be elected to serve for a term of two (2) years.

Section 4.05 Election. Each Member will be entitled to cast, with respect to each vacancy to be filled, the total number of votes to which it is entitled under the Declaration. There will be no cumulative voting. The candidates receiving the most votes will be elected. The directors elected by the Members will hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 4.06 Term. The term of office of each director will continue until the earlier of the expiration of the appointed term, his or her death, resignation or removal from office.

Section 4.07 Qualifications. Each director must be a natural person 18 years of age or older. Directors need not be residents of the State of Utah. The members of the Board of Directors do not need to be Members.

Section 4.08 Resignation. Any director of the corporation may resign at any time by giving written notice to the corporation. A resignation is effective when the notice is received by the corporation unless the notice specifies a later effective date.

Section 4.09 Vacancies. Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association will be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected will be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association will be filled by the election and vote of the Association.

Section 4.10 Removal.

(a) All directors appointed by the Declarant will serve, and may be removed and replaced, at the discretion of the Declarant, and will not be subject to removal or replacement by the Members generally.

(b) Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor will then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

(c) Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and the Board may appoint a successor.

Section 4.11 Right to Disapprove Actions. This Section 4.11 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member will have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section. No action authorized by the Board of Directors or any committee will become effective, nor will any action, policy or program be implemented until and unless the following requirements have been met:

(a) The Class "B" Member will be given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meeting with Article III, Sections 8, 9, and 10 of these Bylaws and which notice will, except in the case of the regular meetings held pursuant to the Bylaws, be set forth in reasonable particularity in the agenda to be followed at said meeting;

(b) The Class "B" Member will be given the opportunity at any such meeting to join in or have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents will make its concerns; thoughts,

and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member will have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any Member of the Association at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. The Class "B" Member will not use its right to disapprove to reduce the level of services which the Association is obligated to provide or prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 4.12 Regular Meetings. Regular Meetings of the Board of Directors may be held at such time and place as will be determined from time to time by a majority of the directors, but at least four (4) such meetings will be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting will be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 4.13 Special Meetings. Special meeting of the Board of Directors will be held when called by written notice signed by the President of the Association or by any two (2) directors. The notice will specify the time and place of the meeting and the nature of any special business to be considered. The notice will be given to each director by one of the following methods: (a) by personal delivery, (b) written notice by first class mail, postage prepaid, (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices will be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail will be deposited into a United States mailbox at least four (4) business days before the time set for the meeting. Notices given by personal delivery, telephone or telegraph will be delivered, telephoned or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 4.14 Action Without a Meeting. Any action required or permitted to be taken at a meeting of the board of directors may be taken without a meeting if consent in writing, setting forth the action so taken, is signed by all of the directors. Such consent has the same force and effect as a unanimous vote of the directors. Action taken under this provision is effective at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the Bylaws or the board of directors to receive the revocation, or

unless the consent specifies a different effective time.

Section 4.15 Waiver of Notice.

(a) Written Waiver. Any director may waive notice of any meeting before or after the date and time of the meeting stated in the notice. Except as provided in subsection (b), below, the waiver must be in writing and signed by the director entitled to notice. The waiver will be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.

(b) Waiver by Attendance. The attendance of a director at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to the holding of the meeting or the transacting of business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

Section 4.16 Quorum. At all meetings of the Board of Directors, a majority of the directors will constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present will constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 4.17 Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board of directors. Voting by proxy is not permitted.

Section 4.18 Meetings by Telecommunication. The board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is considered present in person at the meeting.

Section 4.19 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, will be signed by all of the

directors, and such consent will have the same force and effect as a unanimous vote.

Section 4.20 Powers and Duties. The Board of Directors will be responsible for the affairs of the Association and will have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are provided by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members. The Board of Directors will delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors will have the power to establish policies relating to, and will be responsible for performing or causing to be performed, the following, by way of explanation, but not limitation:

(a) preparation and adoption, in accordance with the Declaration, of annual budgets in which there will be established the contribution of each Owner to the Association's common expenses;

(b) making assessments to defray the Association's expenses (including expenses incurred by virtue of cost sharing agreements entered into with entities such as a residential owner's association, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment, if permitted);

(c) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and any other property for which it has responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(d) collecting the assessments or fines, depositing the proceeds thereof in a bank depository which it will approve, and using the proceeds to operate the Association

(e) making and amending rules and regulations;

(f) opening of bank accounts on behalf of the Association and designating the signatories required;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the property of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted

on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(k) keeping books with detailed amounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred,

(l) making available to any prospective purchaser of a Unit, any Owner of a Unit, and the holders, insurers, and guarantors of mortgages or deeds of trust on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association;

(m) permitting utility suppliers to use portions of the Association's property, if any, as reasonably necessary to the ongoing development or operation of the Community;

(n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles of Incorporation or the Declaration; and

(o) employing a professional property manager to carry out its duties under the Declaration, these Bylaws and any rules and regulations.

Section 4.21 Management. The Board of Directors will retain for the Association a professional property manager at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors will authorize. The obligation of the Board to retain a professional property manager may not be amended or modified. The Board of Directors may delegate to the property manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs (b), (e), (f) and (h) of Section 4.20 of this Article.

Section 4.22 Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise.

(a) accrual accounting, as defined by generally accepted accounting principles, will be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association will not be commingled with any other accounts;

(d) no remuneration will be accepted by the managing agent from vendors,

independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received will benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association will be disclosed promptly to the Board of Directors;

(f) financial reports will be prepared for the Association at least quarterly containing;

(i) an Income Statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(g) financials consisting of at least the following will be made available to all Members within one hundred twenty (120) days after the close of the fiscal year, (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

Section 4.23 Borrowing. The Board of Directors will have the power to borrow for any legal purpose, provided, the approval of the members holding at least fifty-one (51%) percent of the votes represented in person or by proxy at a duly constituted meeting will be required in the event that the proposed borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or the Articles of Incorporation, no mortgage lien will be placed on any portion of the Association's property without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Association vote.

Section 4.24 Rights of the Association. The Association will have the right to contract with any person or entity for the performance of various duties and functions. Without limiting the foregoing, this right will entitle the Association to enter into common management, operational or other property owners' agreements with trusts, condominiums, and cooperatives, of other property owners or similar associations, both within and without the Properties. Such agreements will require the consent of a majority of the total number of directors of the Association.

Section 4.25 Enforcement. The Board will have the power to impose reasonable fines, which will constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder in accordance with the terms of the Declaration.

(a) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought will pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE V – OFFICERS

Section 5.01 Number. The officers of the Association will be a President, Vice President, Secretary, and Treasurer. The Association officers will be elected from among the members of the Board. The Board of Directors may appoint such other officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 5.02 Appointment and Term of Office. Initial officers of the Association will be elected by the Board of Directors after formation of the Association. The officers of the Association will be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5.03 Removal. Any officer, assistant, agent or employee may be removed, with or without cause, at any time by the board of directors, or by any officer to whom or committee of the board of directors to which such power of removal has been delegated, but such removal will be without prejudice to the contract rights, if any, of the person so removed.

Section 5.04 Resignation. An officer may resign at any time by giving written notice of resignation to the corporation. A resignation of an officer is effective when it is received by the

corporation, unless the notice specifies a later effective date. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 5.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors or by any officer to whom or committee of the board of directors to which such power has been delegated.

Section 5.06 The President. The president, unless otherwise specified by the board of directors, will be the chief executive officer of the corporation and, under the direction of the board of directors, will in general supervise and control all the business and affairs of the corporation. The president will, when present, preside, in the absence of the chair of the board, at meetings of the board of directors. The president may hire, prescribe the duties of, and fire employees, and may delegate such authority in whole or in part to any other officer or employee. The president may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation, and any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof will be expressly delegated by the board of directors or by these Bylaws to some other officer or agent of the corporation, or will be required by law to be otherwise signed or executed; and in general will perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 5.07 The Vice President. In the absence of the president, or in the event of the president's death, inability or refusal to act, the vice president (or in the event there is more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) will perform the duties of the president, and when so acting, will have all the powers of and be subject to all the restrictions upon the president. Any vice president may sign, with the secretary or an assistant secretary, certificates for shares of the corporation; and will perform such other duties as from time to time may be assigned to him or her by the president or by the board of directors.

Section 5.08 The Secretary. The secretary will (a) keep the minutes of the board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and affix such seal to documents when authorized; (d) maintain the records required under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, and (e) in general perform all duties incident to the office of secretary

and such other duties as from time to time may be assigned to him or her by the president or by the board of directors. In the absence of a secretary and any assistant secretaries, the president will perform these duties.

Section 5.09 The Treasurer. If required by the board of directors, the treasurer will give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the board of directors will determine. He or she will: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as will be selected in accordance with the provisions of Section 8.04 of these Bylaws; and (c) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the board of directors. In the absence of a treasurer, the secretary will perform such duties.

Section 5.10 Assistant Secretaries and Assistant Treasurers. The assistant secretaries, when authorized by the board of directors, may sign with the president or vice president certificates for shares of the corporation, the issuance of which will have been authorized by a resolution of the board of directors. The assistant treasurers will respectively, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors will determine. The assistant secretaries and assistant treasurers, in general, will perform such duties as will be assigned to them by the secretary or the treasurer, respectively, or by the president or the board of directors.

Section 5.11 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association will be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI – COMMITTEES

Section 6.01 General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present as a meeting at which a quorum is present. Each committee will operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 6.02 Architectural Review Committee. Intentionally omitted.

ARTICLE VII – INDEMNIFICATION

Section 7.01 Indemnification. The corporation will indemnify each person who is or was a director, officer, employee or agent of the corporation or an individual who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee fiduciary, or agent of another corporation or other person or of an employee benefit plan, to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act.

Section 7.02 Authorization of Indemnification. The corporation will be deemed to have authorized such indemnification whenever as determination has been made under Section 16-6a-906 of the Utah Revised Nonprofit Corporation Act that indemnification of an individual is permissible in the circumstances because the person has met the applicable standard of conduct.

Section 7.03 Advance of Expenses. The corporation will accept the undertaking required by Subsection 16-6a-904(1)(b) of the Utah Revised Nonprofit Corporation Act without reference to financial ability to make repayment.

Section 7.04 Insurance. The corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him or her against the same liability.

Section 7.05 Savings Clause. If this Article or any portion thereof will be invalidated on any ground by any court of competent jurisdiction, then the corporation will nevertheless indemnify each officer and director as to expenses, including attorneys' fees, judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether internal or external, including without limitation a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that will not have been invalidated, or by any other applicable law.

ARTICLE VIII – MISCELLANEOUS

Section 8.01 Fiscal Year. The fiscal year of the Association will be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year will be the calendar year.

Section 8.02 Parliamentary Rules. Except as may be modified by Board resolution, Robert’s Rules of Order (current edition) will govern the conduct of Association proceedings when not in conflict with Utah law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 8.03 Conflicts. If there are conflicts between the provisions of Utah law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Utah law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) will prevail. If any provision of these Bylaws is in conflict with Utah law, the provision will be interpreted to be consistent with Utah law and the remainder of these Bylaws will remain in full force and effect.

Section 8.04 Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and Bylaws, membership register books of account, and minutes of meetings of the Members, the Board, and committees will be maintained in accordance with applicable law and the Board and/or the Association may redact information as permitted by applicable law. Subject to the preceding and in accordance with applicable law, the records will be made available for inspection and copying by any Mortgagee, Member of the Association, or by the duly appointed representative of any Member at any reasonable time and for a purpose reasonably related to his or her interest in a Unit at the office of the Association or at such other place within the Properties as the Board will prescribe. In the event any records are copies, the Association may recover copying costs as permitted by applicable law.

(b) Rules for Inspection. The Board will establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made;

and

- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director will have the absolute right at any time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director will include the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 8.05 Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws will be in writing and will be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid;

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no street address has been designated, at the address of the Unit of such Member; or

(b) If to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as will be designated by notice in writing to the Members pursuant to this Section.

Section 8.06 Amendment.

(a) By Declarant. So long as the Class "B" membership exists, the Declarant, as the Class "B" Member, may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the properties within the Community; provided, however, any such amendment will not adversely affect the title to any property unless the owner thereof will consent thereto in writing. Further, so long as it still owns property within the Community, the Declarant may unilaterally amend these Bylaws for any purpose provided such amendment has no material adverse effect upon any right of any Owner.

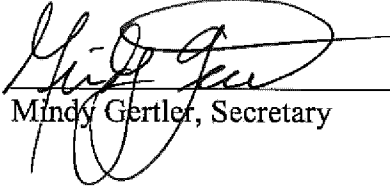
(b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent or any combination thereof, of Members holding seventy-five percent (75%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, so long as such membership exists. However, the percentage of votes necessary to amend a specific clause will not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the prior written consent of Declarant (or its assignee of such right or privilege) or the Class "B" Member, respectively.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws will become effective upon recordation in the public records of Utah County, Utah, unless another

date is specified therein. Any procedural challenge to an amendment must be made within thirty (30) days of its recordation or such amendment will be presumed to have been validly adopted. In no event will a change of conditions or circumstances operate to amend any provisions of these Bylaws. If an Owner consents to any amendment to these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary position in any mortgage or contract between Owner and a third party will affect the validity of such amendment.

Secretary's Certificate

I, THE UNDERSIGNED, being the secretary of Cherrypoint Estates Owners Association, Inc., do hereby certify the foregoing to be the Bylaws of such corporation, as adopted by written consent of its board of directors dated as of January 22, 2024.


Mindy Gertler, Secretary