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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIDDEN SPRINGS SUBDIVISION
(Including Bylaws)

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This Declaration of Covenants, Conditions and Restrictions for Hidden Springs Subdivision (as the same may be amended and supplemented from time to time, hereinafter the "Declaration") is made on the date evidenced below by Richmond American Homes of Utah, a Colorado corporation.

RECITALS

A. Declarant is the owner of certain land in Utah County, Utah, described herein as the Property, shown on the Plat entitled Hidden Springs Plat "A" recorded simultaneously herewith in the Recorder's Office of Utah County, state of Utah, and more particularly described in Exhibit A.

B. It is the intention of the Declarant to develop the Property subject to this Declaration as an expandable residential development, and to ensure a uniform plan and scheme of development, and unto that end the Declarant adopts, imposes and subjects the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein for the following primary purposes:

(1) To provide for uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, the maintenance of the Common Areas, and for the creation of an Association delegated and assigned the powers of maintaining and administering the Common Areas and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges designated by this Declaration; which association shall be incorporated under the laws of the state of Utah as a nonprofit corporation for the purpose of exercising the functions mentioned herein.

C. The Property is not a cooperative and does not contain condominiums.

D. The Property shall be known as Hidden Springs.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

ARTICLE I - DEFINITIONS

When capitalized in this Declaration, words have the meanings set forth in this article.

1.1 "Act" means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

1.2 "Additional Land" means the land described in Exhibit C if an Exhibit C is attached hereto, and which land may be annexed to the Property and made subject to this Declaration thereby expanding the Property as set forth in Article III.

1.3 "Assessment" means any charge imposed or levied by the Association on or against an

Owner or Lot pursuant to a Governing Document or applicable law.

1.4 “Association” means and refers to the Hidden Springs Homeowners Association, a Utah nonprofit corporation, or any successor incorporated or unincorporated association of the Unit Owners acting under the authority of this Declaration and the Bylaws. When an action is required or authorized to be taken by the Association in the Governing Documents or the Act, Association means the Board, except when specifically stated otherwise.

1.5 “Board of Directors” or “Board” means the entity, established in accordance with the Bylaws, with primary authority to manage the affairs of the Association.

1.6 “Bylaws” means the Bylaws of the Association, as they may be amended from time to time, and which are attached hereto in their current form as Exhibit B.

1.7 “Common Area” means: (a) The real property and interests, excluding all Units, which comprise the Project; (b) All common areas and facilities designated as such elsewhere in this Declaration or on the Plat; (c) All Limited Common Area; (d) All installations for and all equipment connected with the furnishing of the Project’s utility services, such as electricity, gas, water and sewer, except as otherwise provided in this Declaration; (e) The Project’s roads (except public roads when the context requires for maintenance purposes); (f) In general, all apparatus, installations and facilities included within the Project which exist for common use; (g) The Project’s outdoor lighting, fences, landscape, sidewalks, parking spaces, driveways and roads; and (h) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

1.8 “Common Expenses” means expenses required by the Governing Documents or the Act to be assessed against all the Lot Owners.

1.9 “Declarant” means Richmond American Homes of Utah, a Colorado corporation, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property, or (b) transfer, set over and assign all of its right, title and interest under this Declaration.

1.10 “Development Period” means a period of ten (10) years from the later of the recording of this Declaration or the recording of a Supplemental Declaration, provided Declarant owns a Lot or a portion of the Additional Land.

1.11 “Eligible Holder” means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association: (1) to be an “Eligible Mortgagee” under this Declaration, or (2) to receive any of the notices which may be provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Unit number to which the Eligible Holder’s mortgage interest applies.

1.12 “Governing Documents” means a written instrument under which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including the Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations, all as may be amended from time to time.

1.13 “Improvements” means every structure or improvement of any kind, including a Residence, landscaping, sprinkler pipes, decks, porches, awnings, fences, garages, driveways,

storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna authorized in accordance with this Declaration).

1.14 “Includes” or “including” mean (regardless of capitalization) that the items listed are not an exclusive or limiting list, unless the word “only” or similar language is used to expressly indicate that the list is an exclusive or limiting list.

1.15 “Limited Common Area” means all of the real property identified as limited common area herein or on the Plat. Limited Common Areas are Common Areas, but to which certain different rights and limitations apply as more fully set forth herein, including that they are limited to the use of certain Units to the exclusion of other Unit Owners. Limited Common Area includes the following, if serving a single Unit but located outside the Unit’s boundaries: driveways, patios and entryways.

1.16 “Lot” means any residential lot or parcel of land, upon which a Unit could be constructed in accordance with applicable ordinances and laws or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements thereon..

1.17 “Manager” or “Managing Agent” means the person or entity that may be retained from time to time by the Association to assist in managing the Property and the administration of the Association.

1.18 “Mortgage” means any mortgage or deed of trust encumbering a Unit and any other security interest existing by virtue of any other form of security instrument or arrangement, if such mortgage, deed of trust or instrument evidencing the security arrangement, has been recorded with the county recorder.

1.19 “Mortgagee” means the person or entity secured by a Mortgage.

1.20 “Notice” means notice as defined in the Bylaws.

1.21 “Owner” means the record owner of fee simple title to any Unit, as such ownership is reflected in the records of the county recorder, but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Unit.

1.22 “Owner in Good Standing” means an Owner when: (1) no Assessment (including any fine) imposed against the Owner or the Owner’s Unit is more than 60 days’ past due, and (2) more than 60 days has elapsed since a fine has been assessed against the Owner.

1.23 “Period of Administrative Control” means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners pursuant to Section 4.1 below.

1.24 “Plat” means the official plat or plats for the Property recorded at the county recorder’s office from time to time, as may be amended or substituted from time to time, and including any Plat recorded hereafter in connection with Additional Land and a Supplemental Declaration. “Plat” in singular form includes all Plats.

1.25 “Property” or “Project” or “Community” means the Hidden Springs subdivision as described on the Plat, including all Lots and Common Area, and all other real property and interests described in the Plat and in this Declaration.

1.26 “Rules and Regulations” means the written rules, regulations, policies, procedures adopted by the Board from time to time.

1.27 “Supplemental Declaration” means a supplement to or amendment of this Declaration executed by Declarant and which expands the Property to include additional Lots by subjecting the area described therein to this Declaration pursuant to Article III.

1.28 “Turnover Meeting” means the meeting of the Association whereat the members of the Board are elected by the Owners pursuant to this Declaration.

1.29 “Unit,” “Residence” or “Dwelling” means a single-family residential dwelling unit constructed upon a Lot. Where the area of a Lot is larger than the footprint of the constructed Residence on the Unit, any part of the Lot outside the Residence shall be treated as Common Area for maintenance purposes as set forth in Section 6.2 below.

ARTICLE II - PROPERTY DESCRIPTION

2.1. Property Subject to the Act, Declaration, and Bylaws. The Property shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and obligations of all parties interested in or who use the Property are governed and controlled by, the Governing Documents, all agreements and determinations of the Association, and the Act, and to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, controls. This Declaration runs with the land and is binding upon each and every party which has at any time any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof, and shall inure to the benefit of the Association and each Owner.

2.2. Description and Legal Status of Units. The Plat (together with the provisions of this Declaration) shows the Common Areas, Limited Common Areas, and Lots, as well as their locations and dimensions from which their areas may be determined. The boundaries and area of a Lot are as defined on the Plat and may only be changed by proper amendment of the Plat and compliance with any applicable law and this Declaration, regardless of whether the footprint of a constructed Residence on a Lot is smaller than the Lot. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed. Except as otherwise expressly provided in the Governing Documents, the Owner of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot.

2.3. Form of Lot Conveyance - Legal Description of Lot. Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Plat with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the county recorder. Such description will be construed to describe the Lot and to incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership as described in the Governing Documents.

2.6 No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey a Lot is not subject to any right of first refusal or similar restriction.

ARTICLE III - EXPANSION OF PROPERTY

3.1 Discretion to Expand Community. Declarant reserves the right at its sole discretion to develop the Property in phases and to expand the Property to include Additional Land by unilateral action of the Declarant without the consent of the Owners for a period of ten (10) years from the date of recording this Declaration in the office of the Utah County Recorder, state of Utah (the "Option to Expand"). The real property subject to the Option to Expand consists of the Additional Land, if any, as more particularly described in Exhibit C (if any). If no Exhibit C is attached at the time this Declaration is recorded, Declarant reserves the right to attach such exhibit at a later time.

3.2 Exercise of the Option to Expand; Process. The Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by Declarant. No assurance is made with regard to which portions of the Additional Land, if any, will be added to the Property or the order in which such portions will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land. There are no limitations as to which portions of the Additional Land may be added. Expansion shall occur by the Declarant recording: (1) an additional plat creating an additional phase for Lots on Additional Land; and (2) a Supplemental Declaration which shall state that the area described therein is subject to this Declaration. Upon the recording of a Supplemental Declaration, the property described therein shall be subject in all respects to this Declaration.

3.3 No Restrictions. Declarant shall not be restricted in the location of improvements on the Additional Land or in the number of Lots that may be created on the Additional Land, except as may be required by applicable zoning requirements.

3.4 Uses of Additional Land. The residential Lots to be located on Additional Land shall be subject to the same use restrictions as provided in this Declaration.

3.5 Units Created. The Units to be built on the Additional Land need not be substantially similar to, but shall be compatible with, the initial Units in quality of construction, principal materials to be used and architectural style. The Units and any buildings to be built on the Additional Land may be substantially different in design, layout and building type. Improvements other than Residences may be erected on the Additional Land. Additional improvements may include recreational facilities, parking areas, walkways and landscaping of the Common Areas, but Declarant makes no assurances regarding such other improvements. Declarant reserves the right to add additional Limited Common Areas to the Additional Land without limitation.

ARTICLE IV - DECLARANT RIGHTS AND CONTROL

4.1 Conflicts. If any other provision of this Declaration or of the Bylaws conflicts with a provision of this Article, the provision in this Article controls.

4.2 Administrative Control of Association. Declarant shall assume full administrative control of the Association through a Declarant-appointed Board, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held no later than upon expiration of the Period of Administrative Control.

The Period of Administrative Control shall expire upon the earlier of:

- (1) 60 days after 75% of the Lots that may be created are conveyed to Lot Owners other than Declarant;
- (2) Five years after Declarant has ceased to offer Lots for sale in the ordinary course of business.
- (3) Declarant voluntarily terminating the Period of Administrative Control. The Declarant may elect to voluntarily terminate the Period of Administrative Control at an earlier time by written notice to Owners and by calling and holding the Turnover Meeting.

4.3 Other Rights.

4.3.1 Sales Office and Model. As long as Declarant owns at least one Lot within the Property Declarant shall have the right to maintain and relocate from time to time sales offices, management offices, sales trailers, signs advertising the Property, and models in any of the Lots which it owns or leases or on the Common Areas, all as Declarant shall determine in its discretion. Declarant shall have the right to show Lots and the Common Areas to prospective purchasers and to arrange for the use of any parking, storage, or recreational facilities within the Common Areas and other portions of the Property by prospective purchasers.

4.3.2 Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, during the Development Period, the approval of the Declarant shall be required in order to amend the Declaration or Bylaws.

4.3.3 Common Area Changes. During the Development Period, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such maintenance, repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant. Additionally, during the Period of Administrative Control, the Declarant may make changes of any nature whatsoever to the Common Area in its sole discretion and without the consent of any other person or entity, including any Owner or the Association.

4.3.4 Architectural Restrictions. No provision of this Declaration restricting or requiring approval for construction or Improvements shall apply to Declarant's building or construction activities during the building and development of the Project.

4.3.5 The Act. The Declarant, the Declarant-appointed Board and the Association are exempt from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The

Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by and to Declarant.

4.3.6 Exemption from Assessments. Notwithstanding anything in this Declaration to the contrary, to the fullest extent permitted by the Act, Declarant shall not be charged, and is exempt from paying, any assessments, whether Annual Assessments, Special Assessments, Individual Assessments, Reinvestment Fees, or otherwise, with respect to Lots owned by Declarant.

4.4 Easements Reserved to Declarant.

4.4.1 An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, is reserved to Declarant.

4.4.2 Declarant further reserves unto itself the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

4.4.3 Declarant hereby reserves an easement throughout the Property during the Development Period for the purpose of allowing Declarant to complete all improvements contemplated by the Declaration and the Plat, including but not limited to improvements to the Additional Land.

4.5 No Actions Adverse to Developmental Rights. The Association, the Board and any Owner may not take any action or adopt any rule or regulation that interferes with or diminishes any right reserved to Declarant pursuant to this Declaration without Declarant’s prior written consent, and any such action shall be null and void and have no force or effect.

ARTICLE V - RESTRICTIONS ON USE

5.1 Animals.

5.1.1. No animals of any kind may be kept in any Lot or Unit except pursuant to rules and regulations established by the Association.

5.1.2. Those animals which are permitted may not cause any noise or disturbance that would be deemed a nuisance to other occupants within the Property. Any inconvenience, damage or unpleasantness caused by an animal shall be the responsibility of the owner thereof to fully remedy. Dogs must be kept on a leash or in a carrier or confined within a Lot. Owners shall be responsible for immediate removal of wastes of their animals from the Property.

5.1.3. Upon violation of this Section 5.1, or in the event the Association finds an animal is harassing or is a vicious animal, the Association may require any animal to be permanently or temporarily removed from the Property by its owner. Harassing means: (1) without provocation to chase any animal or person or approach any person in an apparent attitude of attack when such person is in a place where the person has a right to be, or (2) harassing by tearing, biting, or shaking with the teeth. A vicious animal is any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of, humans or other domestic animals; or which is known to have attacked or bitten any human or domestic animal at least once before. Additionally, the Association may prohibit a Unit occupant from keeping an animal as a result of noncompliance with this Section or any rules regarding animals. Each Owner of a Unit housing an animal shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such animal in the Property.

5.2 Leasing of Lots.

Any lease agreement between an Owner and a lessee must be in writing, and must provide, among other things, that the terms of the lease shall in all respects be subject to the provisions of the Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association. Within 10 days of a Unit being rented, the Owner must provide the Association with a copy of the signed lease agreement and the name of all tenants, including the tenants' family members who will occupy the Unit, and the Owner must keep such information updated with the Association within 15 days of any change. The Association may regulate rentals within the Community in a manner consistent with the law and the purposes of the Community.

No Unit may be rented for the purpose of providing accommodations to travelers or vacationers.

5.3 Residential Use.

Lots may be used for residential purposes only. No trade, craft, business, profession, commercial or similar activity may be conducted within a Lot, unless: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door to door solicitation within the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a Unit shall not be considered a business activity within the meaning of this section.

5.4 Vehicles; Parking

5.4.1 Parking of the following is only allowed in the Property if not prohibited or otherwise restricted by rule of the Association and for no more than two periods of less than 24 hours each in any given seven-day period: (1) boats; (2) trailers; (3) oversized or commercial vehicles (defined as vehicles more than eight and a half feet wide (including mirrors) by nineteen and a half feet long, any vehicle that has more than two axles, a vehicles weighing more than 6,500 pounds); (4) vehicles displaying commercial advertising, logos or business names

exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; (5) truck campers; (6) motor homes; (7) RVs; and (8) vehicles and equipment substantially similar to those listed above. Such a 24-hour period shall begin upon parking of the vehicle and shall expire 24 hours later regardless of whether the vehicle is parked continuously for 24 hours.

5.4.2 Parking on any private street within the Property, or any other Common Area parking area, is prohibited during or after any snowfall until such areas are fully plowed. Except for emergency repairs, no vehicle shall be repaired, constructed or reconstructed on the Property except within a garage.

5.4.3 The Board may adopt further rules and restrictions regarding parking and vehicles within the Property and to govern the enforcement of parking and vehicle restrictions. Vehicles in violation of the Governing Documents may be booted or towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, booting, towing or storing of a vehicle pursuant hereto.

5.5 Window Coverings.

The Association may establish rules regarding draperies, blinds, shades and other interior window coverings to regulate their appearance from the exterior of buildings. No tinted windows are permitted. Aluminum foil, newspapers, reflective film coatings, or any other similar materials may not be used to cover the windows in any unit. All windows and window panes must be harmonious and comparable in size, design and quality to the other Units.

5.6 Signs, Attachments.

Unless approval is obtained from the Board in writing or granted by the Rules, no sign, advertisement, poster, flag or banner of any kind may be displayed to the public view on or from any Lot or the Common Area, except as allowed by law and except: (1) Not more than one "for sale" or "for rent" sign, not exceeding 24 inches in height and 24 inches long, may be temporarily placed on a Lot; (2) the display of a U.S. flag in a Lot is permitted, if the care of the flag and display is consistent with federal law (the Association may control and restrict the display of a flag in the Common Area), and (3) security system signs not exceeding one square foot may be placed on a Lot.

5.7 Offensive Activities, Prohibited Behavior and Use.

It is the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Property. The term "nuisance" includes the following: (1) the development of any unclean, unhealthy, unsightly, or unkempt condition on or in the Property; (2) the storage of any item, property or thing that causes any part of the Property to appear to be in an unclean or untidy condition or that is noxious to the senses, that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents of the Property; (3) actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police must be called to restore order; (4) maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, conditions or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish the enjoyment of the Community by other residents, their guests or invitees; and (5) too much noise or traffic in, on or

about any Lot or the Common Area, especially after 10:00 pm and before 8:00 am. No unlawful use shall be made of any part of the Property, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Nothing shall be done or kept within any Lot or on the Common Areas which will increase the cost of insurance to the Association or to other Owners or which will result in cancellation of insurance on any Lot.

5.8 Antennas/Dishes.

Owners are encouraged to use cable service for television and internet. All outside television or radio aerials or antennas, satellite dishes or other similar devices are prohibited, except satellite dishes, such as Direct Broadcast Satellite (DBS) dishes one meter in diameter or less, designed to receive direct broadcast satellite service or receive or transmit fixed wireless signals via satellite and such other antennas covered by the federal Over The Air Reception Devices Rule (an "Allowed Dish"). Such Allowed Dishes may be installed, provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association at least 48 hours before installing any dish. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the dish. These restrictions, and any other Association restriction, shall not be interpreted or enforced so as to: (1) cause unreasonable delay or prevent installation, maintenance or use of an Allowed Dish; (2) unreasonably increase the cost of installation, maintenance, or use of an Allowed Dish; or (3) preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner. The Owner is responsible for, and shall indemnify and hold the Association harmless from, all damage caused by or connected with a dish servicing the Owner's Lot, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such dish, and including personal injury and any other property damage. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The term "dish" includes antenna in the interpretation of the above policy.

5.9 Appearance.

The Rules may regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Property. For instance, the Rules may limit items on the patio to patio furniture; prohibit hanging of items over the railings; and limit planters and plants and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view. No clothing or other cloth is permitted to hang from the windows or from any of the facades or any other part of a Residence unless the same is not visible from any part of the Common Area or any other Lot. No temporary structures, including but not limited to tents or sheds, may be placed on any part of the Property without the prior written consent of the Board.

5.10 Rubbish and Trash.

No garbage, trash, or other waste may be kept or maintained on any part of the Property outside a

Residence except in a sanitary container as specified by the Association.

5.11 Association Rules and Regulations.

In addition to the restrictions and requirements above, the Board from time to time may adopt Rules governing the conduct of persons anywhere in the Property and the management, maintenance, aesthetics and use of the Lots and Common Areas, including Limited Common Areas, and the operation of the Association, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property and the accomplishment of the purposes of the Association and the Property.

5.12 Declarant's Exemption. To the fullest extent permitted by the Act, Declarant is exempt from all conditions and restrictions set forth in this Article V.

ARTICLE VI - MAINTENANCE OBLIGATIONS

6.1 Maintenance by Owner.

6.1.1 Lots. Except to the extent that the Association is responsible for such maintenance under Section 6.2, maintenance of a Lot and a Residence shall be the responsibility of the Owner thereof, who shall maintain such Lot and Residence in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the Residence and all parts thereof, including every structural element beneath the Unit, exterior windows, window frames, and exterior doors and door frames. The Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, heating equipment, air conditioners, or other appliances or fixtures that may be in, or connected solely with, his or her Lot, including fences, if any. Any pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Lot, all as determined by the Association. The painting or repainting, remodeling, rebuilding or modification of any part of a Unit for which an Owner is responsible must first be submitted to and approved by the Board pursuant to procedures in Article VII below.

6.1.2 Residence Porch Lights. The Owner of each Unit shall maintain at all times a functioning porch light on the Residence that is operated by a photocell sensor such that the porch light fixture emits light when it is dark out. The Rules and Regulations may further implement or clarify this subsection 6.1.2.

6.1.3 Limited Common Area; Shared Driveways. Each Owner shall, at its own cost, maintain, repair, replace, and keep in a clean, sanitary, uncluttered and attractive condition at all times, the Limited Common Areas appurtenant to the Owner's Lot. Any driveway shared by two Lots shall be maintained, repaired and replaced by the Owners of such Lots with each such Owner sharing equally in the costs thereof, unless otherwise agreed in writing as to a given driveway by the Lot Owners sharing such driveway.

6.2. Maintenance by Association. The Association shall provide for, as a common expense, such care, maintenance, repair and replacement of the following as deemed necessary or

desirable by the Board to keep them attractive and generally in good condition and repair: (1) the Common Area (unless otherwise stated in this Declaration); (2) where a Lot is larger than the footprint of the Residence, the shrubs, grass, and other landscaping on the Lot and irrigation systems for such landscaping.

6.3. Snow Removal. The Association shall provide for snow removal from the Common Areas, (including the roads and sidewalks in the Common Area), but not from the Limited Common Area benefitting or servicing only one Lot.

6.4. Failure of Owner to Maintain; Acts of Owner. The Association may, but shall not be obligated to, take such action as necessary if, in the opinion of the Board, an Owner is unwilling or unable to adequately provide the maintenance required by this Declaration, or in order to remedy any condition which is in violation of a Governing Document, and may assume all or part of an Owner's maintenance responsibility. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so and if such Owner has not commenced and diligently pursued remedial action within the time period stated in the notice, which shall be at least 10 days, the Association may proceed to carry out such maintenance or action. Any expenses so incurred by the Association shall be an Individual Assessment against the Lot. If any part of the Property is damaged by the willful or negligent act of an Owner, its guests, tenants, or invitees, the Owner is responsible for all such damage, and the Association may elect whether (1) to repair the damage, in which case, the cost to repair such shall be an Individual Assessment against that Owner and that Owner's Lot, or (2) to require the Lot Owner to repair such damage according to any reasonable terms specified by the Association.

6.5. Further Clarification of Responsibilities. To the extent not clarified in this Declaration, the Association may, by duly adopted resolution of the Board, identify and assign those areas of maintenance and responsibility that are either Owner responsibilities or Association responsibilities. Such a resolution shall not be inconsistent with the provisions of this Declaration and need not be recorded with the county recorder, except such a resolution may be inconsistent with the provisions of this Declaration if the resolution: (1) merely reflects an established pattern of practice which has been in effect and undisputed by any Owner or the Association for five or more years, (2) is approved by unanimous vote of the Board, and (3) is recorded with the county recorder. All such resolutions shall be distributed to all Owners and shall be binding against all Owners.

6.6. Damage to a Lot from Common Area Source. To the extent coverage of any of the following is excluded from the Association's insurance policy as part of an exclusion that is common to typical insurance carriers in the market where the Association is located, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from any parts of the Property, including from any landscaping, runoff area, gutter, pipe, drain, conduit, equipment, or from any other place, unless caused by the negligent or intentional act of the Association. Nothing in this subsection shall relieve or alter any obligation of the Association's insurance carrier under any insurance policy.

ARTICLE VII - APPROVAL REQUIRED FOR IMPROVEMENTS

7.1 Changes and Maintenance Require Approval. No exterior maintenance, repair, replacement, addition, change or alteration to any Lot (including any Improvement) visible from a height of 68 inches above ground level from any part of the Common Area, whether structural, landscaping, cosmetic or otherwise, may be made without prior written Board approval. Board approval shall be requested through submission of plans and specifications showing the nature, kind, shape, height, materials, and location of the proposed maintenance, repair, replacement, construction, addition, change or alteration (an "Application"). Board approval is subject to qualifications and criteria determined by the Board, including but not limited to harmony of external design and location in relation to surrounding structures, topography and the Community generally. Such approval shall be solely at the discretion of the Board as it deems appropriate. The Board has the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as made in good faith and in accordance with the procedures herein. Notwithstanding anything to the contrary in this Section 7.1, Declarant shall not be required to obtain Board approval, or pay any review fee, for any exterior maintenance, repair, replacement, addition, change or alteration to any Lot owned by Declarant that would otherwise be subject to this Section 7.1.

7.2 Approval or Denial of Complete Application. Within 30 days of receipt by the Board of an Application, the Board shall approve or deny the Application and send written notice to the Owner of the Board's determination. If the Application is denied because it is deficient with respect to a specific design review application requirement, the notice shall set forth such deficiencies. If the Board fails to approve or deny an Application within 30 days of receiving it, the Application shall be deemed approved. Failure of the Board to act on an Application shall not be deemed to constitute an approval of any act prohibited by the Governing Documents. A decision that is reasonable, made in good faith, and not arbitrary or capricious, made in the course of the approval or denial of an Application is not subject to judicial review or scrutiny.

7.3 No Liability. The Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of performance for an intended purpose, adequate engineering, structural safety or conformance with building or other codes, standards or practices other than as specifically stated herein. Neither the Board nor any of its members shall be liable to the Association or any person whatsoever for any loss, damage or injury arising out of, or in any way connected with the performance of the Board's duties hereunder.

7.4 Review Fee. The Association may charge a fee for the actual cost of reviewing and approving plans for any construction on or improvement of a Lot, including any costs charged to the Association by any other party, but the Association shall not charge a fee for reviewing and approving plans that exceeds such costs.

7.5 Design Guidelines. All exterior maintenance, repair, replacement, addition, construction or change to any Lot (including any Improvement), except for any Lot owned by Declarant, whether structural, landscaping, cosmetic or otherwise, shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design

criteria which the Board is hereby empowered to adopt (referred to as “Design Guidelines”) to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Property. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Property be equal or superior to that utilized for original construction. All builders and Owners shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted, except that Declarant is not required to comply with or be bound by such design restrictions or Design Guidelines. The Board shall have the authority to establish a security deposit or bond requirement as may be required by the Association and any portion of that amount that shall be non-refundable as an impact fee. Declarant shall not be required to pay any security deposit or impact fee or meet any bond requirement.

ARTICLE VIII - ASSESSMENTS

8.1. Covenant for Assessments. Each Owner, by acceptance of a deed conveying a Lot to such Owner, whether or not so expressed in the deed or other conveyance, is deemed to have covenanted and agreed to pay the Association the following, as provided for and defined below: Annual Assessments, Special Assessments, Individual Assessments and Reinvestment Fees. No Owner may exempt itself from liability for Assessments by abandonment of a Lot. No offsets against Assessment amounts are permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers.

8.2. Annual Budget and Assessment.

8.2.1. Adoption of Budget. The Board shall prepare and adopt an annual budget for the Association which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

8.2.2. Determination of Annual Assessment.

A. The Board shall fix the amount of the annual assessment (“Annual Assessment”) against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least fifteen (15) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

B. The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

C. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred by the Association for any reason, including

nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes the equitable change in the amount of the Annual Assessment.

8.3. Apportionment of Assessments. All Lots shall pay an equal share of Annual Assessments and Special Assessments, subject to the Declarant exemption specified in Article IV. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided for below.

8.4. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community and carrying out the purposes and obligations of the Association, including, but not limited to: (1) the improvement, maintenance, operation, care, and services related to the Common Areas; (2) the payment of insurance premiums; (3) the costs of utilities and other services which may be provided by the Association for the Community; (4) the cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (5) the cost of funding reserves established by the Association, including a general operating excess and a reserve for replacements; and (6) any other items properly chargeable as a Common Expense of the Association.

8.5. Special Assessments. In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments (a "Special Assessment"). The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Owner, may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the Special Assessment exceed the votes cast opposing it, and (2) a quorum of Owners holding 30% of the Association voting rights exists.

8.6. Individual Assessments. Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessments"), except expenses required in the Governing Documents or by law to be a Common Expense. Individual Assessments include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs or attorney fees incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) expenses incurred by the Association relating to the cost of maintenance, repair, or replacement of the individual Lots; and (3) expenses incurred by the Association under Subsection 6.4 above.

8.7. Reinvestment Fees. Subject to the terms and conditions of Section 8.7.2 below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

8.7.1. Upon the occurrence of any sale, transfer or conveyance (as applicable, a "Transfer") of any Lot, but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time. The initial Reinvestment Fee shall in no event exceed the maximum rate permitted by applicable law.

8.7.2. Notwithstanding anything to the contrary contained in this Section 8.7, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

- A. Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the state of Utah.
- B. Any Transfer to the Association or its successors.
- C. Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Lot transferred.
- D. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a Lot by the estate of an Owner.
- E. Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, removing clouds on titles, and any exchange of Lots between Declarant and any original purchaser from Declarant of one or more Lots being Transferred to Declarant in such exchange.
- F. Any lease of any Lot or portion thereof for a period of less than thirty years.
- G. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.
- H. Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

8.7.3. The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

8.8. Reserve Analysis.

8.8.1. Reserve Analysis Required. After the Period of Administrative Control, the Board shall cause a Reserve Analysis to be conducted no less frequently than every eight years, and shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every four years. However, the Board may increase or decrease the frequency of conducting and updating a Reserve Analysis in a formal resolution of the Board. The Board may conduct a Reserve Analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the Reserve Analysis. During the Period of Administrative Control, the Declarant may form a subcommittee of Owners with full responsibility, authority, power and control over the conducting and updating of a Reserve Analysis.

8.8.2. Reserve Analysis Defined. “Reserve Analysis” means an analysis to determine the need to accumulate reserve funds, and the appropriate amount of any reserve fund. A Reserve Analysis shall include:

- (1) a list of the components identified in the Reserve Analysis that will reasonably require reserve funds;
- (2) a statement of the probable remaining useful life, as of the date of the Reserve Analysis, of each component identified in the reserve analysis;
- (3) an estimate of the cost to repair, replace, or restore each component identified in the Reserve Analysis;
- (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the Reserve Analysis during the component's useful life and at the end of the component's useful life; and
- (5) a reserve funding plan that recommends how the Association may fund the annual contribution described in number (4) above.

8.8.3. Reserve Analysis Summary Provided to Owners. The Association shall: (1) annually provide Owners a summary of the most recent Reserve Analysis or update; and (2) provide a copy of the complete Reserve Analysis or update to an Owner who requests a copy.

8.9. Reserve Fund. The Association shall establish and maintain a reserve fund, separate from other Association funds, for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditure, and for any other purpose determined from time to time by the Board. In formulating the budget each year, the Association shall include a reserve fund line item in an amount the Board determines, based on the Reserve Analysis, to be prudent. The Board may not use money in a reserve fund for daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose. If a subcommittee of Owners is formed during the Period of Administrative Control as set forth in Section 8.8 above, such subcommittee may be given full responsibility, authority, power and control over establishing and maintaining a reserve fund in accordance with the requirements of this Section 8.9.

The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged under-funding of the reserve account.

8.10. Nonpayment of Assessments. Unless otherwise provided by resolution of the Board, the Annual Assessments shall be levied and due and payable on a monthly basis on the first calendar day of each month and shall be delinquent if not paid within fifteen (15) days after the due date or such other date established by the Board (the “date of delinquency”). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment. The Reinvestment Fee shall be due and payable to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

8.10.1. Interest. Delinquent payments bear interest at the rate of 18% per annum, or such other lower rate established by the Association from time to time.

8.10.2. Late Charge. Each delinquent payment is subject to a late charge in the amount established by the Association from time to time.

8.10.3. Acceleration. If the delinquent installments of Annual Assessments and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Annual Assessment to be immediately due and payable upon not less than ten days' written notice to the Owner, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

8.10.4. Rent Payments by Tenant to Association. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

8.10.5. Termination of Common Service and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to request a hearing in accordance with the law and any written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner is responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

8.10.6. Remedies under the Act and Other Law. The Association shall have each and every remedy for collection of assessments provided in Utah Code Title 57, Chapter 8a, as amended from time to time, and in Utah Code Title 12, and such remedies and provisions shall be deemed to be fully set forth herein. A collection fee shall be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, in addition to any other amount owed to the Association.

8.11. Lien. All Assessments, together with damages, fines, interest, costs of collection, late charges, and attorney fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents are a charge and continuing lien upon the Lot against which the Assessment is made and shall be construed as a real covenant running with the land. The recording of this Declaration constitutes record notice and perfection of such lien. If an assessment is payable in installments, the lien is

for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

8.12. Personal Obligation and Costs of Collection. Assessments imposed under this Declaration, together with interest and costs and reasonable attorney fees incurred or expended in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot, and in a voluntary conveyance, the grantee of a Lot is jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

8.13. Appointment of Trustee. The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

8.14. Enforcement of Lien. The lien provided for in this Article is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorney fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien may be foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-302 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

8.15. Subordination of Lien to Mortgages. The lien provided for in this Article has priority over each other lien and encumbrance on a Lot except a first or second security interest on the Lot secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Lot. The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability or lien for any Assessments or charges thereafter becoming due, and shall not relieve any Owner of the Owner's personal obligation for such amounts.

8.16. Statement of Unpaid Assessment & Payoff Information. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate

is conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by the Association, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Lot up to the maximum amount allowed by law.

8.17. Application of Payments. Payments upon an Owner's account shall be applied first to costs and attorney fees, then to the oldest charges (regardless of type) on the Owner's account.

ARTICLE IX - PROPERTY RIGHTS AND EASEMENTS

9.1 Use and Occupancy. Except as otherwise provided in Governing Documents from time to time, the Owner of a Lot is entitled to the exclusive use and benefits of ownership of such Lot. Each Lot and its Owner, occupants and guests, are bound by and shall comply with the Governing Documents for the mutual benefit of the Owners.

9.2 Easements Reserved. In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

(1) Easements for Maintenance and Repair. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot (but not a Residence) or Limited Common Area for the purpose of performing maintenance or determining whether the use of the Lot is causing damage or harm to the Common or Limited Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(2) Utility and Other Easements. The Association and any public or private utility provider are hereby granted an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be deemed necessary by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(3) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas (excluding Limited Common Areas), subject to the provisions of the Governing Documents and to the right of the Association to limit the number of residents, guests and invitees using the Common Area at one time, and which right shall include (without limitation) the right of ingress and egress to such Owner's Lot.

Any Person exercising any rights under this Section 9.2 shall indemnify, defend and hold harmless Declarant and the Owner of the property affected by the exercise of the easement for, from and against any and all claims, actions, demands, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys' fees, any mechanic's or materialmen's liens or claims of liens) which may be suffered, incurred, claimed or asserted against Declarant and/or the Owner of the affected property in connection with, arising out of, or in any way related to the exercise of the easement rights granted pursuant to this Section 9.2.

9.3 No Encroachment. No Unit shall encroach upon Common Area. However, it is acknowledged that the Plat is prepared from the architectural drawings of the Property and there may be variances between the boundaries and other features shown on the Plat and actual construction. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area or an adjoining Lot due to or caused by such variances or error in the original construction of any building or improvements, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by any repair or reconstruction of the Property in accordance with the provisions of this Declaration, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Lot. If any part of the Common Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist.

ARTICLE X - THE ASSOCIATION

10.1 Organization. The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the state of Utah, the Board may re-incorporate the Association without a vote of the Owners. The Board governs the affairs of the Association as provided in the Governing Documents.

10.2 Membership. Each Owner during the entire period of Owner's ownership of one or more Lots within the Community is a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

10.3 Voting Rights. The method of voting shall be as provided in the Bylaws. For each Lot owned, an Owner in Good Standing shall have one vote in matters submitted to the Association membership, subject to the Bylaws .

10.4 Powers and Authority of the Association. The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. The Association shall have the exclusive authority and right to provide for the management, use, maintenance, repair, operation or administration of the

Community and Common Area. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

10.4.1 In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (ii) to defend, bring, prosecute, and settle litigation for itself and the Project, (iii) to obtain, contract and pay for, or to otherwise provide for such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable, (iv) to delegate by resolution or contract to a Managing Agent any of its powers under this Declaration, (v) to repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act, (vi) to grant easements and rights-of-way over the Common Area and to approve signage for the Project, and (vii) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a majority of the voting interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

10.4.2 Except as limited in the Governing Documents or by the Act, the Board acts in all instances on behalf of the Association.

10.4.3 Telecommunications and Related Contracts. The Board may modify or cancel existing services or facilities, if any, or the Association may provide additional services and facilities, except that after the Period of Declarant Control, the prior approval of the Owners shall be obtained, by a vote where a majority of the votes cast are cast in favor of the proposal, in order to cancel any existing service or facility or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, shall be provided by the Association

ARTICLE XI - COMPLIANCE, ENFORCEMENT, APPEAL

11.1 Compliance. All Lot Owners, occupants of the Property, and any other person who in any manner uses the Property are subject to and shall comply with the provisions of the Governing Documents, the Act, and any other applicable law. Such a person failing to so comply is subject to any penalties described in the Governing Documents, including fines and an action brought by the Association or an aggrieved Owner.

11.2 Remedies. The voting rights of an Owner more than 60 days' delinquent in the payment of Assessments are automatically suspended until the account is brought current. Violation of any provisions of the Governing Documents (including failure to timely pay an assessment) or of any decision of the Association made pursuant to such documents, shall give the Board acting on

behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

- (1) Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass;
- (2) enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;
- (3) levy fines according to a schedule of fines adopted by the Association from time to time and according to Section 11.3 below;
- (4) terminate the right to receive utility or other services paid for by the Association, and to terminate the right of access to and use of recreational and service facilities of the Association until the violation is corrected;
- (5) suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation;
- (6) bring suit against an Owner to enforce the Governing Documents and the Association is entitled to recovery of its attorney fees and costs in such case.

11.3 Fines. The Association may assess a fine against an Owner for a violation of the Governing Documents in accordance with this Section 11.3.

11.3.1. Warning. A written warning (“Warning”) shall be sent to the Owner of the Lot. The Warning shall:

- (1) describe the violation,
- (2) state the rule or provision of the Governing Documents that the Owner has violated,
- (3) state that the Board may, in accordance with the provisions of the law, assess fines against the Owner and suspend membership rights if a continuing violation is not cured or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning or assesses a fine against the Owner,
- (4) if the violation is a continuous violation, state a time by which the Owner must cure the violation (which time must be at least 48 hours after the day the Owner is given the Warning), and
- (5) state the amount of the fine that will be assessed if a continuous violation is not cured within 48 hours or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning.

11.3.2. Initial Fine. The Board may assess a fine against an Owner if: (1) within one year after the day on which the Board gives the Owner a Warning, the Owner commits another violation of the same rule or provision identified in the Warning; or (2) for a continuing violation, the Owner does not cure the violation within 48 hours after the day the Owner is given the Warning.

11.3.3. Subsequent Fines for Same Violation. After a fine is assessed against an Owner, the Board may, without further warning, assess an additional fine against the Owner each time the Owner: (1) commits a violation of the same rule or provision within one year after the day on

which the Board assesses a fine for a violation of the same rule or provision; or (2) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine.

11.3.4. Notice of Fine. Each time a fine is assessed, notice of the fine shall be sent to the Owner describing the violation, stating the rule or provision of the Governing Documents that the Owner has violated, and stating that the Owner may request an informal hearing before the Board to dispute the fine within 33 days after the date of the notice.

11.3.5. Fine Amounts. A violation of any express rule, regulation, covenant, restriction or provision of any of the Governing Documents is subject to a fine in the amount set forth in a schedule of fines adopted by Rule of the Association from time to time, or in the absence of such schedule, \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$75 per ten days for a continuous violation.

11.4 Appeal by Owner. Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Board to dispute the fine, penalty or suspension within 33 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures promulgated by resolution of the Board from time to time, or if none, in accordance with the standards determined by the Board at the hearing.

11.5 Action by Owners. Subject to any limitation imposed under this Declaration, the Bylaws, or Utah law, an aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy a thing or condition by appropriate legal proceedings.

11.6 Board Action to Enforce Governing Documents – Parameters. The Board shall use its reasonable judgment to determine whether to exercise the Association’s powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including whether to compromise a claim made by or against the Board or Association, and whether to pursue a claim for an unpaid Assessment. The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association’s legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3)(A) a technical violation has or may have occurred, and (B) the violation is not material as to a reasonable person or does not justify expending the association's resources; or (4) it is not in the Association’s best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria. If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action. The Board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action. The Association’s actions or inactions in enforcing or not enforcing a provision of the Governing Documents shall in no event be deemed to constitute a waiver or modification of that provision.

11.7 Injunctive Relief. Nothing in this Declaration shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or

restrictions in the Governing Documents is presumed to cause irreparable harm to the Association and its members.

11.8 Notification of First Mortgagee. The Board shall notify in writing any first Mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty days provided such Mortgagee has requested in writing to be so notified.

ARTICLE XII - INSURANCE

12.1 Association Insurance.

12.1.1. Liability. The Association shall maintain a public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas;

12.1.2. Property. The Association shall maintain property insurance for the Common Area, if required by law or deemed necessary or desirable by the Board;

12.1.3. Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any management agent. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to the Association or any insurance trustee.

12.1.4. Directors and Officers (D&O) Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Board member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the state of Utah, as the same may hereafter be amended or modified.

12.1.5. Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Board deems necessary from time to time, such as worker compensation insurance.

12.2. Acceptable Insurance Providers. The Association shall use generally acceptable insurance carriers.

12.3. Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

- (1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.
- (2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.
- (3) Waiver of Subrogation; Individual Neglect. All policies shall include a waiver of the right of subrogation against Owners individually. All policies shall include a provision that the insurance is not prejudiced by any act or neglect of an individual Owner.
- (4) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by other community associations in the county.
- (5) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time.

12.4. Owner's Insurance. Each Owner shall maintain adequate property insurance coverage for the Owner's Lot.

12.5. Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of the Owner's Unit, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the construction of the Unit prior to the loss, damage or destruction.

ARTICLE XIII - AMENDMENT

13.1 Amendment. Any and all of the conditions, restrictions, charges and terms contained in this Declaration may be annulled, waived, changed, modified or added to through a duly adopted amendment to this Declaration.

13.2 How Proposed. Amendments to the Declaration shall be proposed to the membership only by the Board, either on its own initiative or after it receives a written request to do so signed by Owners in Good Standing holding twenty percent (20%) or more of the Association voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

13.3 Approval Required. This Declaration may be amended if such amendment is approved by Owners holding sixty percent (60%) of the Association voting rights held by

Owners in Good Standing, subject to the approval of Eligible Holders as required in Article XI. Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Board without approval of the Owners if an amendment is necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Lots.

13.4 Unilateral Amendment. To the fullest extent permitted by the Act, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing; or (c) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). Further, so long as Declarant is the Owner of any Lot in the Project, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Lot without the consent of the affected Owner. Such amendments may include, but are not limited to, changing the nature or extent of the uses to which such property may be devoted or readjustment of Lot boundaries in connection with the location and development of the Project.

13.5 Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate county recorder's office.

ARTICLE XIV – MORTGAGEE RIGHTS

14.1 Rights of Eligible Holders. In addition to the rights provided elsewhere in this Declaration, each Eligible Holder shall have the following rights: (1) the right to examine the books and records of the Association upon reasonable notice and at reasonable times; (2) the right, upon written request, to receive an annual financial statement of the Association within ninety days following the end of any fiscal year of the Association; (3) upon written request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings; (4) upon written request to the Association, the right to timely written notice of any proposed termination of the condominium regime; any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which the Eligible Holder holds a Mortgage interest; any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to a Mortgage of the Eligible Holder, where such delinquency has continued for a period of 60 days; and any lapse, cancellation or material modification of any insurance policy maintained by the Association.

ARTICLE XV – DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1 Agreement to Encourage Resolution of Disputes Without Litigation. Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 15.1.1 below, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 15.2 in a good faith effort to resolve such Claim.

15.1.1 As used in this Article, the term “Claim” shall refer to any claim, grievance or dispute arising out of or relating to

- (1) the interpretation, application, or enforcement of this Declaration;
- (2) the rights, obligations, and duties of any Bound Party under this Declaration; or
- (3) The design or construction of improvements within the Project;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 15.2:

(i) any suit by the Declarant to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Declarant’s ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards

(ii) any suit between Owners, which does not include Declarant as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;

(iii) any suit in which any indispensable party is not a Bound Party; and

(iv) any suit as to which any applicable statute of limitations would require within 180 days of giving the notice required by Section 15.2.1, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

15.2 Dispute Resolution Procedures

15.2.1 The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and Declarant (the latter only so long as Declarant is the Owner of any Lot in the Project) stating plainly and concisely:

- (1) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) the Claimant's proposed resolution or remedy; and
- (4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

15.2.2 The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the notice, Declarant (so long as Declarant is the Owner of any Lot in the Project) may appoint a representative to assist the parties in negotiating a resolution of the Claim.

15.2.3 If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 15.2.1 (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the claim to (i) mediation with an entity mutually approved by the parties or to an independent agency providing dispute resolution services in Utah, or (ii) arbitration administered by the American Arbitration Association under its applicable procedures. If the Claimant does not submit the Claim to mediation or arbitration within such time, or does not appear for the mediation or arbitration when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation or arbitration, or within such time as determined reasonable by the mediator or arbitrator, the mediator or arbitrator shall issue a notice of termination of the mediation or arbitration proceedings indicating that the parties are at an impasse and the date that mediation or arbitration was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation or arbitration, including attorneys' fees, and each party shall share equally all fees charged by the mediator or arbitrator.

15.2.4 Any settlement of the Claim through negotiation, mediation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the Declaration or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARTICLE XVI - MISCELLANEOUS PROVISIONS

16.1 Waiver, Precedent and Estoppel. No restriction, condition, obligation, right or provision contained in the Governing Documents shall be deemed to have been abrogated or waived by the Association or its agents, including the Board, or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or

estoppel impairing the right of the Association or any Owner as to any similar matter.

16.2 Premises Liability. The Association and its agents, including Board members, are and shall remain wholly free and clear of any and all liability to, or claims by, all Unit Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and a Unit Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Unit Owner or the Owner's guest, invitee, licensee, tenant, or visitor. In this respect, it is the affirmative duty and responsibility of each Unit Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit the same at their own risk and peril.

16.3 Interpretation. All questions of interpretation or construction of any provision of the Governing Documents shall be resolved by the Board, and its decision is final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted. The Board acts in all instances on behalf of the Association, except as expressly limited by the Governing Documents or law.

16.4 Recovery of Costs and Attorney Fees. The Association is entitled to recover its costs and attorney fees incurred for enforcement of the Governing Documents regardless of whether any lawsuit or other action is commenced. Such costs and attorney fees constitute an Assessment against the Owner and the Unit. Additionally, the prevailing party is entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

16.5 Priority of Governing Documents. To the extent possible under the law and in light of the requirement of the Act that organizational documents for a nonprofit corporation shall not conflict with the rights and obligations found in the declaration and bylaws, in the event of any conflict between or among any Governing Document, a document shall prevail over another in the following order: this Declaration and the Plat control equally but the more specific shall prevail; the Articles of Incorporation; the Bylaws; any Rules and Regulations.

16.6 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used in the Governing Documents, the singular shall include the plural and the plural the singular. All captions used in the Governing Documents are intended solely for

convenience of reference and shall in no way limit any provision.

16.7 Joint Owners. In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration is a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest, subject to the provisions of the Bylaws regarding voting by joint owners.

16.8 Lessees and Other Invitees. No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of the Property. The Owner is responsible for obtaining such compliance and is liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

16.9 Notice of Sale or Lease; Owner's Address. Immediately upon the sale, rental or other conveyance of any Unit, the Owner shall promptly inform the Board of the name and address of said grantee or tenant. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it. The address of each Owner is deemed for all purposes to be the address of the Unit owned by such Owner unless the Board is otherwise advised in writing.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 25 day of November, 2019.

RICHMOND AMERICAN HOMES OF UTAH, INC., a Colorado Limited Liability Company

Sign: [Signature]
Print: Benson J. Whitney
Title: V.P. of Land Acquisition

STATE OF UTAH)
County of SALT LAKE)ss:

Subscribed and sworn to before me on this 25th day of November, 2019 by Benson J. Whitney of RICHMOND AMERICAN HOMES OF UTAH, INC.,



[Signature]
Notary Public for Utah

EXHIBIT A**Legal Description**

A parcel of land, situate in the South Half of Section 19, Township 5 South, Range 2 East, Salt Lake Base and Meridian, containing all of Lot 1 of the Hidden Springs Subdivision, said parcel also located in Pleasant Grove, Utah County, Utah, more particularly described as follows:

Beginning at the intersection of the existing East line of 1650 West Street with the North boundary line of 'The Gables at Pleasant Grove, PUD' subdivision, as recorded under Entry No. 2005-116793 in the Utah County Recorder's Office, which is located North $0^{\circ}17'52''$ West 1259.24 feet along the Quarter Section Line, and South $89^{\circ}40'18''$ West 243.43 feet from the South Quarter Corner of Section 19, Township 5 South, Range 2 East, Salt Lake Base and Meridian, and running:

thence North $2^{\circ}00'26''$ East 679.44 feet along the existing East line of said 1650 West Street;
 thence South $87^{\circ}59'34''$ East 11.00 feet;
 thence Southeasterly 39.27 feet along the arc of a 25.00-foot radius non-tangent curve to the left (center bears South $87^{\circ}59'34''$ East, and the long chord bears South $42^{\circ}59'34''$ East 35.36 feet, through a central angle of $90^{\circ}00'00''$), to the North line of 300 North Street;
 thence South $87^{\circ}59'34''$ East 48.45 feet, along said North line;
 thence South $83^{\circ}13'45''$ East 60.21 feet, along said North line;
 thence South $87^{\circ}59'34''$ East 170.83 feet, along said North line;
 thence Southeasterly 99.25 feet along the arc of a 228.00-foot radius tangent curve to the right (center bears South $2^{\circ}00'26''$ West, and the long chord bears South $75^{\circ}31'19''$ East 98.47 feet, through a central angle of $24^{\circ}56'30''$), along said North line;
 thence South $63^{\circ}03'04''$ East 126.29 feet, along said North line;
 thence Southeasterly 34.28 feet along the arc of a 72.00-foot radius tangent curve to the left (center bears North $26^{\circ}56'56''$ East, and the long chord bears South $76^{\circ}41'22''$ East 33.95 feet, through a central angle of $27^{\circ}16'37''$), along said North line;
 thence North $89^{\circ}40'19''$ East 228.19 feet, along said North line;
 thence Southeasterly 108.54 feet along the arc of a 228.00-foot radius tangent curve to the right (center bears South $0^{\circ}19'41''$ East, and the long chord bears South $76^{\circ}41'22''$ East 107.52 feet, through a central angle of $27^{\circ}16'37''$), along said North line;
 thence South $63^{\circ}03'04''$ East 181.00 feet, along said North line;
 thence Southeasterly 54.89 feet along the arc of an 89.50-foot radius tangent curve to the left (center bears North $26^{\circ}56'56''$ East, and the long chord bears South $80^{\circ}37'10''$ East 54.03 feet, through a central angle of $35^{\circ}08'13''$), along said North line;
 thence North $81^{\circ}48'43''$ East 28.65 feet, along said North line;
 thence Northeasterly 38.13 feet along the arc of a 25.00-foot radius tangent curve to the left (center bears North $8^{\circ}11'17''$ West, and the long chord bears North $38^{\circ}07'09''$ East 34.54 feet, through a central angle of $87^{\circ}23'08''$), along said North line, to the West line of Proctor Lane (1300 West);
 thence Northwesterly 4.65 feet along the arc of a 420-foot radius tangent curve to the right (center bears North $84^{\circ}25'35''$ East, and the long chord bears North $5^{\circ}15'24''$ West 4.65 feet, through a central angle of $0^{\circ}38'02''$), along the West line of Proctor Lane (1300 West);
 thence South $83^{\circ}46'06''$ East 27.94 feet;
 thence South $1^{\circ}30'04''$ West 20.96 feet;
 thence South $4^{\circ}47'44''$ East 107.24 feet;
 thence South $89^{\circ}10'52''$ East 14.21 feet;
 thence South $1^{\circ}02'23''$ West 331.19 feet;
 thence South $89^{\circ}44'08''$ West 20.41 feet, to the Northerly boundary line of said 'The Gables at Pleasant Grove, PUD';
 thence North $1^{\circ}04'58''$ East 7.68 feet, along said boundary;
 thence West 80.00 feet along said boundary;
 thence South $0^{\circ}48'20''$ East 8.92 feet along said boundary;
 thence South $89^{\circ}40'18''$ West 1,119.80 feet along said boundary, to the Point of Beginning.

Parcel contains: 678,368 square feet, or 15.57 acres.

EXHIBIT B
BYLAWS
OF
HIDDEN SPRINGS HOMEOWNERS ASSOCIATION

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ARTICLE 1 - DEFINITIONS

The definitions contained in or adopted by the Declaration is applicable to these Bylaws.

ARTICLE 2 – NOTICE, ELECTRONIC MEANS, HOA REGISTRY

2.1 Notice.

2.1.1 Association. All notices to the Association or the Board shall be sent care of either the chair of the Board or the primary contact for the Association designated as such in the Utah Homeowner Associations Registry, or to the principal office of the Association, or to such other physical or electronic address as the Board may designate for this purpose in writing from time to time.

2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Owners or an Owner, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail; all other Owners are required to provide the Association with a current email address. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time.

(b) Sufficient Notice. Any notice sent or delivered by the Association to an Owner is deemed to be received and sufficient for all purposes if sent to such physical or electronic address as most recently designated by the Owner in writing to the Board, or if no address has been so designated, then, if by mail or hand delivery, to the Owner's Unit, or if by email, to an email address from which the Association has received email correspondence from the Owner. If a Unit is jointly owned, notice sent to only one of the foregoing physical or electronic addresses is sufficient.

2.2 Conducting Business, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the Owner if the Association, through the Board, does so in good faith and has no reason to believe it is not the act of the Owner. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by an Owner or by the Association.

2.3 Utah HOA Registry. The Association shall register with the Utah Department of Commerce in the manner established by the department and in compliance with the Act (the "Homeowner Associations Registry"), including by providing (1) the name and address of the Association, (2) the name, address, telephone number, and, if applicable, email address of the president of the Association, (3) the name and address of each Board member, and (4) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of an Owner's financing, refinancing, or sale of the Owner's Unit. The Association shall update such information with the Registry within 90 days after a change in any of the information.

ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM

3.1 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah as is designated in the notice of

such meeting.

3.2 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by Owners in Good Standing holding at least 25% of the Association voting rights. When a special meeting is demanded by the Owners, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.3 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each Owner entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

3.4 Voting. Each Unit is allocated such vote in the affairs of the Association equal to the Percentage Interest appertaining to such Unit.

3.5 Proxies, Absentee Ballots and Rights of Mortgagees.

3.5.1 Proxies. A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by the Board by resolution or as stated in the notice of the meeting. A proxy is valid for, and only for, the meeting (and any adjournment of the meeting) for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven months after the date of execution. No proxy is valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

3.5.2 Absentee Ballots. A vote may be cast by absentee ballot.

3.5.3 Mortgagee Rights. An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative is entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights

from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

3.6 Quorum.

3.6.1 “Quorum” means the minimum number of Owners (when duly represented in person or by proxy at a meeting or casting a written ballot in an action by written ballot or consenting to an action without a meeting) necessary to make the proceedings valid.

3.6.2 At any regular annual meeting of the Association, the Owners that are represented for any purpose at the annual meeting shall constitute a quorum. For any other meeting of the Association or action taken without a meeting, Owners holding one-third (1/3) of the voting rights in the Association, represented in person, by proxy, or by written ballot, shall constitute a quorum (except when a higher quorum is required by the Governing Documents).

3.6.3 If any meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Owners holding twenty percent (20%) of the Association voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

3.6.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

3.7 Binding Vote. Action on a matter other than the election of Board members is approved and is binding upon all Owners for all purposes if a quorum exists and the votes cast by Owners in Good Standing favoring the action exceed the votes cast by Owners in Good Standing opposing the action, unless a greater number of affirmative votes is required by the Governing Documents.

3.8 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

3.9 Meeting Procedure. Rules of order may be adopted by resolution of the Board, otherwise, the president shall conduct meetings according to the procedure the president deems fit and shall have authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used. All informalities or irregularities in calls or notices of meetings and in the manner of voting, credentials, and methods of ascertaining

those present shall be deemed waived by those present if no objection is made at the meeting.

3.10 Election Inspectors. The Board, in advance of any meeting of the Association, may appoint an election inspector or inspectors to act at such meeting (and at any adjournment thereof). If an election inspector or inspectors are not so appointed, the President may, or upon request of 10% of the Owners entitled to vote at the meeting will make such appointment. If any person appointed as an inspector fails to appear or to act, a substitute may be appointed by the President. If appointed, the election inspector or, inspectors (acting through a majority of them if there be more than one) will determine the Owners entitled to vote, the authenticity, validity and effect of proxies and the number of Owners represented at the meeting in person and by proxy; they will receive and count votes, ballots and consents and announce the results thereof, which announcement of results, as reflected in the minutes of the meeting, is conclusive evidence of such results for all purposes; they will hear and determine all challenges and questions pertaining to proxies and voting; and, in general, they will perform such acts as may be proper to conduct elections and voting with complete fairness to all Owners.

3.11 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than fourteen (14) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of Board members; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Association members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.12 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Association members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such

writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section is effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

3.13 Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in a matter put to the members of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to the person's name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners, in the absence of protest by a co-owner. In the event of a protest, no one co-owner is entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes needed and given with respect to the matter.

ARTICLE 4 - BOARD MEMBERS

4.1 Number, Term and Qualifications. The following provisions of this Article shall apply after the Period of Administrative Control, except Section 4.1.1 shall apply at all times.

4.1.1 The affairs of the Association shall be governed by a Board composed of at least three (3) and not more than five (5) Board members, as determined by the Board.

4.1.2 Members of the Board shall serve for a term of two (2) years. The terms shall be staggered so all Board members are never elected in the same year.

4.1.3 A Board member must be an Owner, or the spouse of an Owner, in Good Standing, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which is an Owner in Good Standing, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Unit.

4.2 Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) for positions on the Board be made by petition filed with the Secretary of the Association at least thirty days prior to the annual meeting of the Association, which petition must signed by the nominee named therein indicating the nominee's willingness to serve as a member of the Board, if elected. The Board may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Board. The Board or, if established, the nominating committee, shall make as many nominations for election as it shall in its discretion determine, but not less than the number of vacancies. Self-nominated candidates who qualify for election are permitted,

provided they comply with any procedures for self-nomination stated herein or promulgated by the Association at least 30 days before the applicable meeting.

4.3 Election. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written ballot. The persons receiving the largest number of votes are elected. Cumulative voting is not permitted.

4.4 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected is a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve. The Board shall fill such a vacancy within the time period that the Board reasonably determines.

4.5 Removal of Board Members.

4.5.1 At any annual or special meeting, any one or more of the Board members may be removed, with or without cause, by Owners in Good Standing holding at least a majority of the Association voting rights. The notice of the meeting must state that the removal is to be considered and any Board member whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. The vacancy so created may only be filled by a successor elected by the Owners by plurality. The Board member shall cease to be a Board member immediately upon tallying of the necessary number of votes in favor of removal. The Board, by vote of a majority of the remaining Board members even though they may constitute less than a quorum, shall then determine whether a successor is to be elected at that meeting or at a meeting held within 60 days of that meeting, and in either case the nomination procedure shall be determined by the Board in accordance with Section 4.2.

4.5.2 A Board member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular Board Meetings, or is absent from more than 25% of the regular Board Meetings held in any 12 month period, is deemed to have tendered the member's resignation, and upon acceptance by the Board, the position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

4.6 Compensation. No Board member shall receive compensation for any service the member may render to the Association as a Board member. However, any Board member may be reimbursed for actual expenses incurred in the performance of the member's duties.

ARTICLE 5 - MEETINGS OF BOARD

5.1 Definition of Meeting and of Get-together. A meeting of the Board means a gathering of the Board, whether in person or by means of electronic communication in real time under Section 5.5, at which the Board can take binding action (a "Meeting"). A "Get-together" of the Board means a gathering of two or more members of the Board at which the Board cannot take binding action. A Get-together is not a Meeting. No notice to any members of the Association

or the Board is required for a Get-together of the Board. No binding action may be taken at any Get-together. Training for members of the Board may occur at a Get-together.

5.2 Organizational Meeting.

5.2.1 Location, Date and Time. The first Meeting of a newly-elected Board shall be held at such place, date and time as fixed by the Board members at the Meeting at which the Board members were elected and no notice is necessary to owners or to the newly elected Board members in order to legally hold the Meeting providing a majority of the elected Board members are present.

5.2.2 Until the election of new officers, those existing officers that continue to serve on the Board shall remain in their positions, and the organizational Meeting shall be chaired by the president, or in the absence of such person, the vice president, or in the absence of such person, the secretary. At the organizational Meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.3 Regular Meetings. Regular Meetings of the Board shall be held at such place and hour as may be fixed in a Meeting schedule from time to time by the Board, and if so fixed, no notice thereof need be given to Board members. Should the Meeting fall upon a legal holiday, then that Meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.4 Special Meetings. Special Meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three days' notice to each Board member personally, by mail, email, telephone, or facsimile, unless waived pursuant to 5.9 below. The notice must state the time, place, and purpose of the Meeting.

5.5 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, Meetings of the Board may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate orally in real time.

5.6 Meeting Procedure. Unless other rules of order are adopted by resolution of the Board, Meetings of the Board shall be conducted in the manner deemed fit by the president, and a decision of the Board may not be challenged on the basis of the misuse or non-use of rules of order.

5.7 Open Meetings; Notice of Meetings; Executive Sessions. This Section 5.7 shall apply after the Period of Administrative Control.

5.7.1 Open Meetings. Except as provided in subsection 5.7.3, all Meetings of the Board shall be open to each Owner or a representative of the Owner designated in writing. At each Meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the Meeting. Beyond such comment period, no Owner shall have a right to participate in the Board Meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board Meeting. The Board may adopt policies

governing Meetings of the Board from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law.

5.7.2 Notice of Board Meeting. At least 48 hours before a Board Meeting, the Association shall give written notice of the Meeting via email to each Owner who requests notice of a Board Meeting (“Meeting Notice”), unless notice of the Meeting is included in a Meeting schedule that was previously provided to the Owner, or the Meeting is to address an emergency, and each Board member receives notice of the Meeting less than 48 hours before the Meeting. A Meeting Notice shall: (1) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (2) state the time and date of the Meeting; (3) state the location of the Meeting; and (4) if a Board member may participate by means of electronic communication under Section 5.5 above, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

5.7.3 Executive Sessions. In the discretion of the Board, the Board may close a Board Meeting and adjourn to executive session to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual’s reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

5.7.4 Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open Meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the Meeting.

5.8 Action Taken by Board without a Meeting.

5.8.1 Notice, Response. The Board shall have the right to take any action in the absence of a Meeting which it could take at a Meeting if notice is transmitted in writing to each member of the Board and each member of the Board, by the time stated in the notice:

- (a) (1) signs a writing in favor of such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a Meeting.

5.8.2 Content of Notice. The notice required by Subsection 5.8.1 (the “Notice”) shall state:

- (a) the action to be taken;
- (b) the time by which a Board member must respond to the Notice;
- (c) that failure to respond by the time stated in the notice will have the same effect as: (1) abstaining in writing by the time stated in the Notice; and (2) failing to demand in writing

by the time stated in the Notice that action not be taken without a Meeting; and
 (d) any other matters the Association determines to include.

5.8.3 Approval of Action/Decision. Action is taken under this Section 5.8 only if, at the end of the time stated in the Notice:

(a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a Meeting at which all of the Board members then in office were present and voted; and

(b) the Association has not received a written demand by a Board member that the action not be taken without a Meeting (other than a demand that has been revoked pursuant to Subsection 5.8.5).

5.8.4 Waiver of Meeting. A Board member's right to demand that action not be taken without a Meeting is waived unless the Association receives such demand from the Board member in writing by the time stated in the Notice.

5.8.5 Revocation. A Board member who in writing has voted, abstained, or demanded action not be taken without a Meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

5.8.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 5.8, communications to the Association are not effective until received.

5.9 Waiver of Notice. Any Board member may at any time waive notice of a Meeting in writing, and the waiver is equivalent to the giving of the notice. Attendance by a Board member at any Meeting constitutes a waiver of notice by the Board member, except where the Board member attends the Meeting for the express purpose of objecting to the transaction of any business because the Meeting is not lawfully called or convened. If all Board members are present at any Meeting, no notice to Board members is required and any business may be transacted at the Meeting.

5.10 Quorum and Acts. At all Meetings of the Board, a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present are the acts of the Board. If, at any Meeting, there be less than a quorum present, the majority of those present may adjourn the Meeting from time to time. At any such adjourned Meeting, any business which might have been transacted at the Meeting as originally called may be transacted without further notice.

5.11 Proxies at Board Meetings. For purposes of determining a quorum with respect to a

particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a Meeting and to vote if the Board member has granted a signed written proxy: (1) to another Board member, or other person, who is present at the Meeting; and (2) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

ARTICLE 6 - POWERS, RIGHTS AND DUTIES OF BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or the Governing Documents specifically directed to be exercised and done by, or upon the vote of, the Owners.

ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

7.1.1 Designation. The principal officers of the Association are a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.1.2 Qualifications. The principal officers must be Board members (and shall cease to be an officer upon ceasing to be on the Board). Any Board member may be an officer of the Association.

7.1.3 Multiple Offices. A person may simultaneously hold more than one office.

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

7.2 Election and Vacancies. The officers of the Association may be elected by the Board at the organizational Meeting of each new Board or any Board Meeting thereafter to serve until their respective successors are elected at the next organizational Meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president is the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all Meetings of the Board and the minutes of all Meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and is responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer is responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS

8.1 No Volunteer Liability.

8.1.1. No volunteer providing services for the Association, including a volunteer Board member or officer, incurs any of the following if (a) the individual was acting in good faith and reasonably believed the individual was acting within the scope of the individual's official

functions and duties with the Association, and (b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct: (1) legal liability for any act or omission of the volunteer while providing services for the Association, and (2) personal financial liability for any (i) contract claim under any agreement, instrument or transaction entered into by such person on behalf of the Association, (ii) tort claim or other action seeking damage for an injury (including physical, nonphysical, economic, and noneconomic damage) arising from any act or omission of the volunteer while providing services for the Association, or (iii) any claim arising out of the use, misuse or condition of any part of the Property that might in any way be assessed against or imputed to the volunteer as a result of or by virtue of their capacity as a volunteer, director, officer or committee member, including by any victim of a crime occurring at the Property.

8.1.2. "Volunteer" means any individual performing services for the Association who does not receive anything of value from the Association for those services except reimbursements for expenses actually incurred and annual compensation equal to no more than the annual assessment amount per Unit.

8.1.3. The protection against volunteer liability provided by this article does not apply (1) to injuries resulting from a volunteer's operation of a motor vehicle, or (2) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law.

8.2 Indemnification. Each officer and Board member shall be indemnified by the Association to the fullest extent permitted by law, including the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities incurred by such person in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which the person is or may be a party by reason of being or having been a Board member or officer of the Association, and upon submitting notice to the Association of any such action, suit or proceeding, the Association shall undertake all costs of defense and advancement of loss to the fullest extent permitted by law, until and unless it is proven that the alleged damage or injury was caused by an intentional or knowing act by the person which constitutes illegal, willful, or wanton misconduct. Upon such proof, the Association is not liable for such cost of defense or loss, and may recover amounts already expended from the officer or Board member who so acted. The right to indemnification provided by this section shall not be exclusive of any other rights to which the Board member or officer may be entitled by law or agreement or otherwise. Punitive damages may not be recovered against the Association.

ARTICLE 9 - RECORDS AND AUDITS

9.1 The Association shall maintain within the state of Utah all documents, information and other records of the Association in accordance with the Governing Documents, the Act and the Utah Revised Nonprofit Corporation Act.

9.2 General Records.

9.2.1 Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws and Articles of Incorporation, (2) minutes of all meetings of the Association and of the Board; (3) a record of all actions taken without a meeting by the Association members or the Board; (4) a record of all actions taken by a committee in place of the Board on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Board or any committee of the Board.

9.2.2 Resolutions and Rules. The Association shall maintain (1) a record of the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

9.2.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.2.4 Certain Records: Where Kept, Availability.

(a) The Association shall keep and make available to Owners without charge, through the Association website, or, if the Association does not have an active website, then physical copies of the documents shall be made available to Owners during regular business hours at the Association's address registered with the Department of Commerce's Utah HOA Registry, a copy of the Association's: (1) Declaration and Bylaws, (2) most recent approved minutes, and (3) most recent budget and financial statement.

(b) In addition, the Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the minutes of all Owners' meetings for a period of three years; (3) records of all action taken by Owners without a meeting, for a period of three years; (4) all written communications to Owners generally as Owners for a period of three years; (5) a list of the names and business or home addresses of the current officers and Board members; (6) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (7) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

9.2.5 Form of Records. The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set

forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

9.3 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Unit, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person making the request within ninety days after the end of each fiscal year. From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association.

9.4 Availability of Records to Owners.

9.4.1 Owner May Elect Method. An Owner may elect whether to: (1) view and copy records in person, (2) receive hard copies of records, or (3) receive the records electronically.

(a) In Person. Except as to records specified in Section 9.2.4(a), if an Owner elects to view and copy records in person, the Owner must bring imaging equipment to the inspection which shall be at a reasonable place, and during such hours specified by, the Association and the Association shall provide the necessary space, light, and power for the imaging equipment.

(b) Receive Hard or Electronic Copies. Except as to records specified in Section 9.2.4(a), if an Owner elects to receive hard copies of records or to receive records electronically, the Owner may request a recognized third party duplicating service to make the copies and any necessary electronic scans of documents, in which case, the Association shall arrange for the delivery and pick up of the original documents, and the Owner shall pay the duplicating service directly. If the Association makes the copies or electronic scans, the Owner shall pay the Association the reasonable cost of the copies or of any necessary electronic scans of documents, which may not exceed: (1) the actual cost that the Association paid to a recognized third party duplicating service to make the copies or electronic scans; or (2) if an agent of the Association makes the copies or any electronic scans, 10 cents per page and \$15 per hour for the person's time making the copies or electronic scans. If the Owner requests a recognized third party duplicating service make the copies or electronic scans

9.4.2 Availability of Records Kept at Principal Office. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the records in Section 9.2.4(b) above.

9.4.3 Availability of Other Records - Proper Purpose Required. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the other records of the Association, except those specified in Section 9.2.4(a), and: (1) the request must be made in good faith and for a proper purpose; (2) the Owner must describe with reasonable particularity the purpose and the records the Owner desires to inspect; and (3) the records must be directly connected with the described

purpose.

9.4.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Board may withhold from inspection or copying any records: (1) considered by the Board in executive session and the minutes of any executive session, or (2) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Board, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

ARTICLE 10 - AMENDMENTS

The approval of Owners holding at least 60% of those Association voting rights which are held by Owners in Good Standing, the approval of 51% of the Eligible Holders, and the approval of Declarant as provided in the Declaration shall be required for any amendment to these Bylaws. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the county recorder's office.

ARTICLE 11 - MISCELLANEOUS


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

11.2 Fiscal Year. The fiscal year of the Association shall be determined by the Board in its discretion.

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

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by its duly authorized officer on this 25 day of November, 2019.

**RICHMOND AMERICAN HOMES OF UTAH,
INC.,** a Colorado Limited Liability Company

Sign: 
Print Name: Benson J. Whitney
Title: V.P. of Land Acquisition