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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
CATHY SPUCK
8260 S 560 E
SANDY UT 84070
BY: ARA, DEPUTY - WI 82 P.

AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
THE SUNBURST MEADOWS
PLANNED UNIT DEVELOPMENT
IN
SALT LAKE COUNTY, UTAH

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AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE SUNBURST MEADOWS

Planned Unit Development

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SUNBURST MEADOWS PLANNED UNIT DEVELOPMENT (this “**Declaration**”) is adopted by the Sunburst Meadows Homeowners’ Association (the “**Association**”) and is effective as of the date it is recorded in the Salt Lake County Recorder’s Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration
- B. Certain real property in Salt Lake County, Utah, known as The Sunburst Meadows Planned Unit Development was subjected to certain covenants, conditions, and restrictions, as set forth in paragraphs C through F, below.
- C. A plat map entitled “The Sunburst Meadows Planned Unit Development” was recorded in the Salt Lake County Recorder’s office on March 19, 1985 as Entry No. 4063120.
- D. An initial declaration entitled “Declaration of Covenants, Conditions, and Restrictions of The Sunburst Meadows Planned Unit Development” was recorded in the Salt Lake County Recorder’s office on May 23, 1985 as Entry No. 4090126, in Book 5657 beginning at Page 457 (the “**Enabling Declaration**”).
- E. A plat map entitled “The Sunburst Meadows Amended Planned Unit Development” was recorded in the Salt Lake County Recorder’s office on June 16, 1992 as Entry No. 5278470.
- F. An “Amendment to Sunburst Meadows Homeowner’s Association Covenants and Restrictions” was recorded in the Salt Lake County Recorder’s Office on September 15, 2011 as Entry No. 11243869, in Book 9950 beginning at Page 2616 (the “**Amendment**”).
- G. This Declaration is adopted: (1) to clarify and define the rights and responsibilities of the Association and the Owners, in and to the Project, (2) to conform to changes to the Utah Community Association Act and other Utah law, (3) to provide for a general plan for managing the Project and Property, and (4) in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project and the Property.
- H. This Declaration (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects any prior declarations (including the Enabling Declaration) and amendments thereto (whether recorded or not, properly adopted or not, or referenced in this Declaration or not) prior to the date of the recording of this Declaration.

- I. This Declaration affects the Property, which is located in Salt Lake County, State of Utah, and described on the attached Exhibit A, which exhibit is attached hereto and incorporated herein by this reference.
- J. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previous bylaws of the Association and any amendments thereto.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the Terms and Conditions set forth below, the Association hereby adopts this Declaration. This Declaration, together with the Plat, Bylaws, and Rules adopted by the Association, shall define and govern the rights and responsibilities of the Owners and the Association related to the Project.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **“Act”** shall mean the Community Association Act codified beginning at § 57-8a-101 *et seq.*, Utah Code Annotated, in effect at the time this Declaration is recorded, and as such may be amended from time to time.
- 1.2 **“Allocated Interest”** shall mean the interest of that Owner of a particular Lot which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. Each Lot shall have an equal Allocated Interest.
- 1.3 **“Architectural Review Committee”** shall mean the Sunburst Meadows Homeowners’ Association Architectural Review Committee as set forth herein.
- 1.4 **“Articles”** shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.5 **“Assessment”** shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.6 **“Association”** shall refer to the Sunburst Meadows Homeowners’ Association, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.7 **“Board Member”** shall mean a duly-qualified and elected or appointed member of the Board of Directors.
- 1.8 **“Board of Directors” or “Board”** shall mean the entity with primary authority to manage the affairs of the Association.
- 1.9 **“Bylaws”** shall mean the Bylaws of the Association attached as Exhibit B and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded with the County Recorder of Salt Lake County, state of Utah.

- 1.10 **“Common Area”** shall, unless otherwise more specifically provided for in this Declaration, mean everything and everywhere in the Project, except to the extent any fixture, structure, or other area is within the boundaries of, or a part of, a Lot. Except as identified on the Plat or in this Declaration, Common Area includes, but is not limited to:
- (a) All real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple, not contained within the boundaries of a Lot;
 - (b) All utility installations and all equipment connected with or in any way related to the furnishing of utilities (such as electricity, gas, water, television, internet, and electronic services, and the removal of wastewater) for the Common Area or for the common use of all Lot Owners, but this does not include the installations and any equipment connected thereto to the extent that such serve only one Lot or Dwelling;
 - (c) As applicable, all apparatus and installations clearly intended and existing for common use;
 - (d) All structures on the Common Area not contained within the boundaries of a Lot, including, but not limited to, the recreation area with cement pad, the basketball standard within the recreation area, all gates, retaining walls, streetlights, sidewalks, roadways, open space, and gullies in the Project;
 - (e) All Limited Common Area;
 - (f) The sidewalks, perimeter fences not also used as part of the fencing of a Limited Common Area, streetlights, entry features, and roadways not dedicated to a municipality; and
 - (g) All other parts and amenities of the Project outside of the Lots not dedicated to the public or which are necessary or convenient to the Project’s existence, maintenance, safety, or normally in common use.
- 1.11 **“Common Expenses”** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of that portion of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Lots which are maintained by the Association, if any; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) utilities (other than utilities that are separately metered and charged to the Lots) and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.12 **“Declaration”** shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Sunburst Meadows Planned Unit Development, including all attached exhibits, which exhibits are incorporated by reference, and any and all future amendments to this Declaration.

- 1.13 **“Design Guidelines” or “Architectural Design Guidelines”** shall mean those requirements governing the site location and architectural design of Dwellings and other buildings, structures and improvements within the Project as adopted by the Board.
- 1.14 **“Dwelling”** shall mean the single-family residence built on any Lot.
- 1.15 **“Electronic Transmission” or “Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.16 **“Front Yard Area”** shall mean the Common Area enclosed by: an extension of the rear yard fence lines on either side of an Owner’s Dwelling extended forward up until the sidewalk, with the sidewalk as the forward boundary and the front of the Lot and the front of the rear yard Limited Common Area to the sides of the Lot as the rear boundary. For Lots 14 and 20 where the rear yard fences do not extend to the northern sidewalk, “Front Yard Area” shall additionally include the grassy Common Area enclosed by (a) an extension of the north-south fence line of the fenced-in Limited Common Area appurtenant to each of those Lots extending north to the sidewalk immediately to the north, (b) the north fence line of the fenced-in Limited Common Area appurtenant to each Lot and an extension of that north fence line, west to the sidewalk for Lot 14 and east to the sidewalk for Lot 20, and (c) the sidewalk on the south side of the street 8240 South.
- 1.17 **“Governing Documents”** shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, the Articles, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project.
- 1.18 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Lot.
- 1.19 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Lots to the exclusion of other Owners. Conveyance of a Lot includes the use of the Limited Common Area designated for the use of the Owner of the Lot.
- 1.20 **“Lot”** shall mean, and include, any numbered lot, or “pad,” shown on the Plat.
- 1.21 **“Manager”** shall mean any entity or Person engaged by the Board of Directors to manage the Project.
- 1.22 **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling on a Lot or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.23 **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Salt Lake County Recorder. However, Owner shall not include a trustee for a deed of trust.
- 1.24 **“Pad”** shall, as used in the Plat and in this Declaration, except where the word “pad” is listed in the northwest corner of the recreation area on the Plat, mean any numbered lot shown on the Plat map. For purposes of this Declaration, the term “Pad” shall have the same meaning as the term “Lot.”

- 1.25 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.26 **“Plat”** shall mean, the record of survey map or maps of the Project recorded in the records of the Salt Lake County Recorder and all amendments and supplements thereto.
- 1.27 **“Project”** shall mean the Property and all structures and improvements thereon including the Lots and Common Areas.
- 1.28 **“Property”** shall mean the property legally described and identified in Exhibit A and all easements and rights appurtenant thereto.
- 1.29 **“Rules”** shall mean and refer to the rules and regulations adopted by the Association.
- 1.30 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

ARTICLE 2: THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Project and declares and agrees that the Project and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including the Owner’s heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project contains thirty-three (33) single-family detached homes. The Project has a grassy recreation area with a cement slab and basketball standard in the northwest corner of the Project. The as-built construction of the recreation area differs from that shown on the Plat in that there is no “PAD” in the northwest corner of the recreation area and the cement slab is not shown on the Plat. The decorative block walls indicated on the Plat at the south end of the Project also differ in that they are now vinyl fencing. The Project is a planned unit development and is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named “The Sunburst Meadows Planned Unit Development” and is located entirely in Salt Lake County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 **Identification of Lots.** All of the Lots are referenced specifically and identified by location and number on the Plat.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporations and Commercial Code, or any successor division or department of the State of Utah.

ARTICLE 3: LOTS, COMMON AREA, & ALLOCATED INTERESTS

- 3.1 **The Lots.** Each Lot is identified on the plat by a distinct Lot number.
- (a) Subject to further specification herein, each Lot generally consists of any and all improvements on or within the boundary of the Lot and all structures and related equipment or installation on or within the boundary of the Lot, including but not limited to:
- (1) The Dwelling constructed on a Lot and components thereof, in or on the boundary of any Lot.
 - (2) All garages, sheds or other approved structures attached to or located adjacent to a Dwelling.
 - (3) All pipes, wires, conduits, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot and such lying outside of the boundaries of the Lot to the extent that they serve only the one Lot and Dwelling on such Lot.
- 3.2 **Limited Common Area.** The Limited Common Area consists of: (1) areas identified on the Plat as Limited Common Area, which generally includes, but is not necessarily limited to, the fenced-in rear yard and the driveway appurtenant to each Lot, the walkway connecting the driveway to the front porch of a Dwelling or to the Dwelling itself, and small planter strips in the front of certain Lots.
- (a) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot where so identified and may not be severed from the ownership of the Lot.
- (b) The as-built construction that exists at the time this Declaration is recorded shall be the controlling dimension for any Limited Common Area element installed or constructed on a Lot, and to the extent that there is a variance between the boundary location on the Plat and the as-built construction then the as-built construction shall control.
- (c) Should it be unclear from the Plat together with this Declaration if a particular area is Common Area or Limited Common Area, the Board of Directors shall have absolute authority in determining the proper designation of that area.
- 3.3 **No Severance of Common Area.** The right to and interest in the Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot.
- 3.4 **Allocated Interest of Each Lot in the Votes of the Association.** The Owners of each Lot shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote on or approve. Each Lot shall have an equal Allocated Interest.
- 3.5 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein, are hereby incorporated into and made a part of this Declaration. If any conflict exists between the Plat and this Declaration, this Declaration shall control.

ARTICLE 4: MAINTENANCE, REMODELING, AND UTILITIES

4.1 Owner Responsibility for Maintenance.

- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, the maintenance, repair, and replacement of the Owner's Lot, appurtenant Limited Common Area (including any to the rear of a Lot and designated as such on the Plat but not enclosed by fencing), and the Front Yard Area adjacent to the Lot, including, but not limited to:
- (1) All of the Dwelling;
 - (2) Any porch, patio, steps, railing, deck, walkway, or driveway that serves the Owner's Lot exclusively;
 - (3) Any patio covering, awning, storage unit, pond, or water feature;
 - (4) Any lawn (except as provided in Subsection 4.2(b)), including watering, weeding, fertilizing, leaf raking, and removal of any feces;
 - (5) Any irrigation or sprinkler system;
 - (6) Bushes, shrubs, flowers, flowerbeds, and planter boxes;
 - (7) Any trees of which at least part of the trunk is within the Owner's Lot, appurtenant Limited Common Area, Front Yard Area, or park strip adjacent to the Lot (Owners sharing a tree with a trunk common in any of these areas shall equally pay and be responsible for the maintenance, repair, and replacement of such tree);
 - (8) Fences and gates enclosing any Limited Common Area (Owners sharing a common fence enclosing Limited Common Area shall equally pay and be responsible for the maintenance, repair, and replacement of such fence); and
 - (9) Any and all improvements thereof.
- (b) Each Owner shall also furnish and be responsible for, at the Owner's own expense, the maintenance, repair, and replacement of:
- (1) All pipes, wires, conduits, public utility, water or sewer lines, or any other similar fixtures servicing only the Lot;
 - (2) The Owner's mailbox and stand (Owners sharing a mailbox stand in common shall equally pay and be responsible for the maintenance, repair, and replacement of such stand);
 - (3) The parking strip(s) between the Front Yard Area adjacent to an Owner's Lot and the street, including watering (to include any associated irrigation or sprinkler system), weeding, and leaf raking; excepting the parking strips referred to in Subsection 4.1(c)(2), which have any related Owner responsibility set forth therein;
 - (4) Any air conditioning unit or other appliance or fixture attached to the Owner's Dwelling; and

- (5) The sewer lateral servicing only the Owner's Dwelling.
- (c) The following maintenance responsibilities are specific to the Owners of particular Lot(s):
 - (1) The Owner of Lot 17 is responsible for the maintenance, repair and replacement of the parking strip area to the east of Lot 17's appurtenant Limited Common Area, including watering (to include any associated irrigation or sprinkler system), weeding, and leaf raking.
 - (2) The Owners of Lots 1, 2, 32, and 33 are responsible for the watering, including the maintenance, repair and replacement of any associated irrigation or sprinkler system, of the Common Area and parking strip south of each of those Lots' respective Front Yard Area and appurtenant Limited Common Area.
- (d) Each Owner is responsible for keeping the roofing and exterior surfaces of the Owner's Dwelling, as well as all fixtures thereto, in good repair, clean, and properly attached. It is also the responsibility of the Owner to maintain any painting of exterior surfaces within the Owner's Lot and Limited Common Area.
- (e) Each Owner is responsible for keeping all exterior areas of the Owner's Lot, Limited Common Area, Front Yard Area adjacent to the Lot, and parking strip(s) for which an Owner has maintenance responsibilities other than solely the watering of the parking strip in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, installed, or placed on the exterior of any Lot or on Limited Common Area, which may include a prohibition on leaving, installing, or storing any items or animals in such places.
- (f) Snow Removal. Each Owner shall keep the Owner's appurtenant driveway, the sidewalk next to the Owner's appurtenant driveway, and the sidewalk next to the Front Yard Area adjacent to the Owner's Lot reasonably clear of ice and snow.

4.2 Association Responsibility for Maintenance.

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

- (2) The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, removal, and replacement of the Common Areas, including, but not limited to, the following: (1) the lawn, trees, shrubs, and other plants within the Common Area, except those in the Front Yard Area which will be maintained and replaced by the adjacent Lot Owner as set forth in Section 4.1, (2) the recreation area with its cement slab and basketball standard, and any future structures or amenities that may be constructed, (3) any streetlights located within the Common Area, and (4) any sprinkler or irrigation system throughout the Project servicing the Common Area, other than in the Front Yard Areas and the parking strips for which maintenance and/or watering has been assigned to Owners. Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall not be obligated to maintain any utility or utility system or component which is maintained by any municipality.
 - (3) Other than the responsibility of Owners indicated in Section 4.1(c)(2), the Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the east-to-west parking strips at the southern border of the Project.
- (b) **Mowing and Fertilization.** The Association is responsible for the seasonal mowing, fertilization, and trimming of the Common Area, including the Front Yard Areas and parking strips, notwithstanding any maintenance responsibilities Owners may otherwise have for the Front Yard Areas and parking strips.
- (c) **Snow Removal.** The Association is responsible for keeping the following areas reasonably clear of ice and snow:
 - (1) The sidewalk area at the southeast corner of the recreation area located at the northwest corner of the Project.
 - (2) The east-west sidewalks at the southern border (8300 South) of the Project.

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

- 4.3. **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Lot, Dwelling or other area for which the Owner is responsible according to the maintenance standard set forth by the Association and as required in the Governing Documents, or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of at least fourteen (14) days or a greater length of time if determined by the Board. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing any maintenance, snow removal, repairs, or replacements) and may assess the Owner for all costs associated therewith as a special Assessment as set forth in Article 7 herein.
- 4.4. **Modifications to Lots and Architectural Review.** Without the prior approval of the Association, an Owner may not: (1) install or build any new structure, fence, or Dwelling; (2) make alterations, upgrades, or modifications to any part of the exterior of any structure or Dwelling; or (3) install or alter any new or existing exterior feature that alters the exterior appearance of a Lot or Limited Common Area. This provision is intended to be read as broadly as possible to require approval before any exterior work to a Lot or Limited Common Area.
- (a) No Dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than a detached single-family home.
 - (b) Architectural Review Committee.
 - (1) An Architectural Review Committee (or "ARC") may be appointed by the Board. Such committee shall consist of three (3) members. The ARC shall have the Board's right of entry to verify compliance with this Section 4.4. At least one (1) ARC member must be a Board Member. Members of the ARC shall serve for a term of two (2) years, and may serve for consecutive terms of service as appointed by the Board. Any vacancy on the ARC may be filled by the Board to serve the remainder of the term of the originally appointed member(s). The ARC may act even though a vacancy has not been filled. Any member of the ARC may be removed at any time by the Board with or without cause.
 - (2) The Board need not appoint an ARC. If no such committee is appointed, the Board shall have all powers of the ARC and may act in all ways and have all powers otherwise given to the ARC.
 - (3) The ARC shall serve as an architectural review board and shall regulate the external design, appearance, and location of any structure on any Lot or Limited Common Area, so as to enforce the architectural provisions of

this Declaration or Architectural Design Guidelines as may be adopted by the Board.

- (c) **Submission of Plans to Architectural Review Committee for Approval.**
- (1) **New Structures.** No structure of any kind whatsoever shall be erected, placed, moved onto, or commenced without the prior written approval of the ARC. The Board may adopt Rules relating to obtaining of such prior written approval. Unless and until the Board adopts such Rules, an Owner must submit such plans and specifications as the ARC may reasonably require, but shall in all cases include the following:
- (i) A complete set of plans and specifications, including photographs if applicable;
 - (ii) A site plan showing the location of all proposed and existing structures on the Lot;
 - (iii) Exterior elevations for the proposed structures;
 - (iv) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures;
 - (v) Description of the plans and provisions for landscaping and grading; and
 - (vi) Proposed construction schedule.
- (2) **Exterior Modifications.** Unless otherwise allowed in this Declaration, no exterior remodels, additions, or major modifications to the Lot, exterior of the Dwelling, or Limited Common Area whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ARC. By way of illustration, but not of limitation, the following are considered remodels, additions, or major modifications: installation of a flagpole, air conditioning equipment, awnings, porch or patio balcony enclosures, sunshades, solar energy system, fencing, exterior walls, outside speakers and amplifiers; changing landscaping and planting; painting the exterior of the Dwelling or any structure a new color; excavation; additions of new rooms to a structure; changing the exterior material of a structure; or any other work that significantly alters the appearance of the Lot, Dwelling, or Limited Common Area. The ARC may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the ARC. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. The Board may adopt Rules relating to obtaining such prior written approval. Unless and until the Board adopts such Rules, the following provisions shall apply:
- (i) Owners must submit such plans and specifications as the ARC reasonably may require, including any of the specific documents

included in Section 4.4(c)(1)(i)-(vi) that may be requested by the ARC.

- (3) **ARC Approval Not Required.** No ARC approval is required for the following modifications: interior modifications that do not affect the exterior of the building, repainting the exterior of a building with the current color, planting bulbs and annual flowers in flowerbeds, replacing grass with the same kind of grass, replacing windows or doors with the same size, color, and design of window or door, replacing roofing with the same color and material of roofing, and making repairs to irrigation/sprinkler systems. The Board, however, may still adopt Rules relating to the use of Common Area or streets within the Project for staging and other construction needs.
- (d) **Architectural Review.** The ARC shall consider applications for approval of plans and specifications upon the basis of conformity with this Declaration, and Architectural Design Guidelines, if any, adopted by the Board as Association Rules. Applications for approval shall be made to the ARC, or to the Board President if no ARC has been appointed, at least 30 days prior to the proposed start of any alteration, modification, upgrade, or installation. The Owner is responsible for ensuring that the plans and specifications comply with all applicable laws and ordinances. To the extent allowed by law, the ARC shall have the right to refuse to approve any plans or specifications submitted to it which are not suitable or desirable in its opinion, for aesthetic or other considerations. The ARC shall be guided by the extent to which such proposal will ensure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors:
 - (1) The quality of workmanship;
 - (2) Nature and durability of materials;
 - (3) Harmony of external design with existing structures;
 - (4) Choice of colors;
 - (5) Changes in topography, grade elevations and/or drainage;
 - (6) The ability of the party or parties designated by the Owner to complete the structure or modifications proposed in accordance with this Declaration, including, without limiting the foregoing, the party's or parties' background, experience, skill, quality of workmanship, and financial ability;
 - (7) The effect of the proposed structure or modification on the use, enjoyment, and value of neighboring properties and/or on the outlook or view from adjacent or neighboring properties; and
 - (8) The suitability of the proposed structure or modifications with the general aesthetic appearance of the surrounding area.
- (e) **Failure of Architectural Review Committee to Act.** If the Architectural Review Committee, or Board if no Architectural Review Committee has been established,

shall fail to act upon any written request submitted to it within thirty (30) days after a complete submission of documents in a form acceptable to the Architectural Review Committee, such request shall be deemed to have been approved as submitted, and no further action shall be required.

- (f) **Architectural Design Guidelines.** The Architectural Review Committee shall enforce the Architectural Design Guidelines, if any, adopted by the Board as Association Rules. Such Architectural Design Guidelines may include but are not limited to restrictions on: building height, exterior siding, stucco, and roofing materials and colors, and landscaping. In the event that the Board does not adopt Architectural Design Guidelines, the following restrictions shall apply:
- (1) **Exterior Materials.** All exterior surfaces of any building shall be of materials and of colors approved in writing by the ARC, excepting roofing being replaced with roofing of the same material and color, which may be replaced without approval.
 - (2) **Roofing.** The roofing material for all Dwellings and other structures in the Project shall be architectural grade shingles of a thirty (30) year grade or better. All new roof colors and material must be approved in writing by the ARC.
 - (3) **Exterior Fencing.** Prior to the construction or replacement of any fencing, a site plan must be submitted to the ARC which includes the exact location, style, height, and material proposed to construct or replace the fencing. Written approval from the ARC is required for the construction or replacement of any fencing. No Lot Owner shall remove, add to, alter, stain or paint any fencing without written consent of the ARC.
 - (4) **Roof mounted air conditioners, swamp coolers, solar energy systems, satellite dishes, antennas, and other fixtures** shall require written approval from the ARC prior to installation. To the extent allowed by law, the Board may adopt further Rules regulating the installation of such equipment and fixtures.
- (g) **Expenses of Architectural Review Committee.** The Architectural Review Committee may charge reasonable fees for the processing of any request, plans, or specifications including consultation with a professional. The Association shall pay any ordinary or reasonable architectural review expense incurred by ARC members in the performance of their duties herein.
- (h) **Violations.** If any structure is altered, erected, placed or maintained on any Lot or Limited Common Area, or if any modifications to landscaping is made, other than in accordance with approved plans and specifications and applicable law, then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to the Lot Owner stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of at least thirty (30) days or a greater length of time if determined by the Board. If the Owner fails to carry out such action within the period specified by

the notice, then the Association may take any action allowed for a violation of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include, but is not limited to, removal of any non-complying structure, or restoration of any non-complying modifications of structures, Dwellings, or landscapes to their original or compliant condition) and may assess the Owner for all costs associated therewith as a special Assessment as set forth in Article 7 herein.

- (i) **Variances.** The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplement thereto, including restrictions on height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by a majority of the members of the ARC. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Terms and Conditions of the Association's Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations. The granting of a variance for one Owner shall not set a precedent that other Owners may receive a similar variance. The ARC shall consider each request for a variance on a case-by-case basis.

- 4.5 **Utilities.** For all utilities metered separately and charged to each Lot, charges shall be the responsibility of each respective Lot Owner to pay. To the extent that any utilities are measured for multiple Lots, such utilities shall be paid as set forth in Rules adopted by the Board, or if no applicable rules have been adopted, as set forth in the applicable budget for the Common Expenses. Charges for water and power used for the recreation area at the northwest corner of the Project is the responsibility of the Association to pay.

ARTICLE 5: ORGANIZATION & GOVERNANCE OF ASSOCIATION

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 5.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in this Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents consistent with the terms of this Declaration and Bylaws.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an

ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one (1) Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.

- 5.5 Availability of Documents.** The Association shall make available to the Owners, Lenders, and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records, and financial statements related to the operations of the Association. The term “available” as used in this Section 5.5 shall mean available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper written request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board of Directors determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.
- 5.6 Board of Directors or Board.** The governing body of the Association shall be the Board of Directors elected or appointed pursuant to the Bylaws. The Board of Directors shall consist of between three (3) and seven (7) members. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Board of Directors shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in this Declaration, Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Association. The Board may retain professionals, including, without limitation, attorneys, accountants, Managers and bookkeepers to assist in any Board function.
- 5.7 Board Members.**
- (a) **Qualification.**
- (1) To be on the Board of Directors, a Person must be at least eighteen (18) years old, a record Owner of a Lot or the spouse of an Owner of a Lot, and must have their primary residence in Salt Lake County, Utah.
 - (2) Only one Board Member may serve per Lot.
 - (3) The Bylaws shall provide for procedures to ensure these requirements are maintained.
- 5.8 Officer Election.**
- (a) Election of Association officers shall be by the Owners, as prescribed in the Bylaws.
- 5.9 Limitation on Authority of Owners, Board Members, Officers, & the Board.**

- (a) Except as provided herein or in the Bylaws, the Board, any individual Owner, and any individual Board Member or officer shall have no authority to and may not act on behalf of the Association or the Board of Directors to:
 - (1) Amend or terminate any Governing Document;
 - (2) Elect or remove members of the Board of Directors;
 - (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board Members or of the Board of Directors; or
 - (4) Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

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

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

ARTICLE 6: GENERAL RIGHTS & RESPONSIBILITIES OF THE ASSOCIATION

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

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

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

- (a) Any capital improvement to the Project that does not materially alter the nature of the Project and does not exceed \$5,000 may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.

- (b) Capital improvements in excess of \$5,000 require the approval of at least fifty-one percent (51%) of Owners in attendance at a duly called member meeting pursuant to the provisions of the Bylaws.
 - (c) Any capital improvement which would materially alter the nature of the Project, regardless of its cost, must, prior to being constructed or accomplished, be authorized by the consent of Owners holding at least fifty-one percent (51%) of the Allocated Interests in the Association and must be approved of by the Board of Directors. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Lot shall be permitted without the written consent of all directly affected Owners.
- 6.4 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.
- 6.5 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 6.6 **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 6.7 **Entering Lots.** After having given the appropriate notice as required in Article 17, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Lot to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
- 6.8 **Entering Limited Common Area.** The Association has the right at all times to enter Limited Common Area to check on compliance with the Governing Documents, to abate violations, and for any other purpose that is reasonable and in the interest of maintaining the general character of the Project as determined by the Board. The Association may give notice prior to entering Limited Common Area, but is not required to do so.
- 6.9 **Hiring Managers and Delegating Responsibilities.** The Association may decide to hire a Manager to assist the Board in management and operation of the Project. If the Association hires a Manager, the Board may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without

penalty and with or without cause upon thirty (30) days' notice. The Board has no authority to enter into any management agreement or contract inconsistent with the Terms and Conditions of these Governing Documents or that provides for any termination fee or requirement for termination for cause only.

- 6.10 **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- 6.11 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments; and (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 6.12 **Discretion in Enforcement.**
- (a) Subject to the discretion afforded in this Section 6.12, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - (b) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Association, and (2) whether to pursue a claim for an unpaid Assessment.
 - (c) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or Rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
 - (d) Subject to Subsection (e), if the Board decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
 - (e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- 6.13 **Reserve Fund.** The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in this Declaration and the Act.
- 6.14 **Conflicts of Interest with Service Providers and Vendors.** If the Association is incorporated as a nonprofit corporation, then the provisions of Utah Code Ann. § 16-6a-825 shall apply to conflicting interest transactions. If the Association is not incorporated as a nonprofit corporation, then the following shall apply:

- (a) As used in this Section 6.14, “conflicting interest transaction” means a contract, transaction, or other financial relationship between the Association and:
 - (1) a Board Member;
 - (2) a spouse, child, grandchild, sibling, or parent of a Board Member;
 - (3) the spouse of any individual described in subsection 6.14(a)(2);
 - (4) an individual having the same home as a Board Member;
 - (5) a trust or estate of which a Board Member or an individual described in subsection 6.14(a)(2) is a substantial beneficiary;
 - (6) a trust, estate, incompetent, conservatee, or minor for which/whom a Board Member is a fiduciary; or
 - (7) an entity in which a Board Member:
 - (i) is a director or officer; or
 - (ii) has a financial interest.
- (b) Except as allowed by subsection 6.14(c), the Association shall not permit any paid services or materials obtained by the Association to be performed or provided in a manner that would create a conflicting interest transaction.
- (c) The restriction on conflicting interest transactions in subsection 6.14(b) shall not apply if:
 - (1) the material facts as to the director’s relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board; and
 - (2) the Board in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Board Members, even if the disinterested Board Members are less than a quorum.

6.15 Establishing Hearing Procedures. The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents and in any such process shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two (2) weeks’ notice of the hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue. The Board may rely on any reasonable information and evidence in determining whether or not a violation of the Rules has occurred both initially and after a hearing.

- 6.16 **Review and Audit of Association Finances.** The Association may have an independent accountant conduct a review of the Association's finances. The Association shall make any such review available to the Owners. Any Owner may have an audit or review conducted of the Association's records by a CPA, at that Owner's expense, and the Association shall cooperate in providing access to any records needed for that audit or review. Upon receipt of a request signed by Owners holding forty percent (40%) of the Allocated Interests, the Board shall have an audit conducted of the Association's finances by a CPA and shall make the audit available to the Owners.
- 6.17 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting each year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- 6.18 **Project Air Space, Drones, and Unmanned Aircraft.** The Association shall have the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property. The Association shall also have the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property and (2) in any airspace within 1000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Project's airspace shall not subject the Association to liability for damages to Persons or property relating to the operation of such a device. Any Owner or tenant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device and (2) indemnify and defend the Association, its Manager, and all officers and directors (past or present), from any claims related to the device. The Association shall have the power to establish Rules implementing this Section 6.18 and such Rules may include, and are not limited to, the following: (1) requiring Owners to provide information about and/or photographs of the device to the Association, (2) requiring flying devices to be marked with the Owner's name or other information, (3) establishing certain areas, hours, minimum or maximum height limitations, or banning flying of devices completely, (4) banning altogether or designating required commercial drone delivery landing sites, and (5) any other reasonable Rules related to the flying of devices. This Section 6.18 does not create any Rules or policy to regulate, ban any use, and impose reasonable requirements on the use of airspace; rather, its purpose is to authorize the Association, in its discretion, to create such Rules.
- 6.19 **Fee for Change of Records.** Subject to applicable law, the Association may establish Rules allowing it to charge an administrative fee to an Owner for any change to Association records necessitated by the actions of the Owner, such as the transfer of title of the Lot to add or remove an Owner or resulting from the sale of the Lot.

ARTICLE 7: BUDGETS & ASSESSMENTS

- 7.1 **Purpose of Assessments.** Money collected by the Association shall be used for: the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 **Budget and Regular Assessment.**
- (a) At least annually, the Board shall prepare and adopt a budget for the Association.
 - (b) The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate.
 - (c) The Board shall present the adopted budget to the Owners at a meeting of the Owners.
 - (d) A budget may be disapproved if within 45 days after the date of the meeting of the Owners at which the Board presents the adopted budget (1) there is a vote of disapproval by Owners holding at least 51% of the Allocated Interest in the Association, and (2) the vote is taken at a special meeting of Owners called for that purpose in the manner outlined in the Bylaws.
 - (e) If a budget is disapproved under subsection 7.2(d), the budget that the board last adopted that was not disapproved by members will continue as the budget until and unless the Board presents another budget to members and that budget is not disapproved.
 - (f) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Lot by multiplying the total budgeted amount by the Allocated Interest for each Lot.
- 7.3 **Payment of Regular Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 **Adjustments to Regular Assessments.** In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment.
- 7.5 **Personal Obligation for Assessment.** Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date

the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs, and attorney fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due.

- 7.6 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board.
- 7.7 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than special Assessments to individual Lots) shall be allocated to all Owners based on the Allocated Interest of each Lot.
- 7.8 **Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a certificate of payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.9 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. For any valid request, and upon payment of a fee of not more than the maximum amount allowed pursuant to the Act, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 **Account Payoff Information.** The Association may charge a fee for providing payoff information related to amounts owed by an Owner to the Association in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The fee for providing the payoff information shall be fifty dollars (\$50.00). The Rules may establish a different fee amount, but such fee shall not exceed the maximum amount allowed pursuant to the Act.
- 7.11 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 7.12 **Special Assessments to an Individual Lot.** Special Assessments may be levied by the Association against a particular Lot and its Owner for:
- (a) Costs of providing services to the Lot upon request of the Owner;
 - (b) Costs incurred in bringing an Owner or the Owner's Lot, Dwelling, or area or item for which an Owner has maintenance responsibility into compliance with the provisions of the Governing Documents;

- (c) Fines, late fees, collection charges, and interest;
 - (d) Any other charge designated as pertaining to an individual Lot or Owner in the Governing Documents; and
 - (e) Attorney fees, costs, and other expenses relating to any of the above.
- 7.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Board of Directors.
- 7.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular calendar year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments, refund the excess to the Owners in proportion to the Allocated Interests of each Lot, or take other action with the funds permitted under this Declaration, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.15 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amounts by Owners shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.16 **Application of Payments.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.17 **Administration of Assessment Funds.** The Association shall keep all Assessment-generated funds in an account, or accounts, in the name of the Association. The Association shall not commingle Assessment-generated funds with the personal funds of any other Person.
- 7.18 **Loans.** Upon approval of Owners holding at least fifty-one (51%) of the Allocated Interests by vote at a meeting called for that purpose, the Association may borrow money and may provide such security as necessary for the loan, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Lot shall be security for any loan to the Association without that Owners' consent.

ARTICLE 8: NONPAYMENT OF ASSESSMENTS & LIABILITY

- 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 **No Suspension of Voting Rights.** The Board may not suspend the voting rights of an Owner that is delinquent in the payment of Assessments.
- 8.3 **Collection Charges and Interest.** The Board may adopt Rules governing the collection of Assessments. If the Board does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply:
- (a) **Regular Assessments:**
 - (1) The Association is not required to send bills or invoices for the collection of Regular Assessments. Each Owner is responsible to keep track of and stay current on the payment of Regular Assessments. If the Association elects to periodically (i.e.: quarterly) statements to Owners, such statements may be sent by mail, email, or hand delivery. Additional requests for statements by an Owner may be submitted to the Treasurer by phone, email, or mail and the Owner will be charged a fee for each statement requested. The fee for such additional statements may be set forth in the Rules; however, unless and until a Rule is adopted, the Association may charge \$5.00 for each additional statement.
 - (2) Regular Assessments shall be due and payable on the first (1st) day of each month and will be considered late if not received by 5:00 PM on the tenth (10th) of the month.
 - (3) Accounts with an unpaid balance after the tenth (10th) of each month shall be charged a fifteen dollar (\$15.00) late fee.
 - (b) **Special Assessments:**
 - (1) Special Assessments are due on the date given in the Assessment notice sent by the Board, and will be considered late if not paid within ten (10) days of the date due.
 - (2) Accounts with an unpaid balance more than ten (10) days after the date due shall be charged a fifteen dollar (\$15.00) late fee.
 - (c) In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at one and one-half percent (1.5%) per month, compounded monthly.
 - (d) The Association may also assess to the Owner a collection charge, additional late fees, and any other reasonable charges by a Manager related to collections.
- 8.4 **Joint and Several Liability of Owner and Future Owners.** The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the

Lot shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Lot.

- 8.5 **Lien.** The Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, attorney fees, court costs, and other costs of collection (which shall include all costs and are not limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of the Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien for fines shall arise when (1) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (2) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over every other lien and encumbrance on a Lot except only: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.
- 8.6 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.7 **Foreclosure Sale.** The Association shall have all rights of judicial foreclosure granted by the Act.
- 8.8 **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 8.9 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) access to the amenities and Common Area in the Project, and (2) rights to receive a utility or other service paid for as a common expense.
- 8.10 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any Occupant in a

Dwelling for any delinquent Assessment balance more than sixty (60) days late. Each Occupant, by moving into the Project, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.

8.11 Attorney Fees Incurred as a Result of a Default.

(a) In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to:

- (1) obtain advice about a default;
- (2) collect unpaid Assessments;
- (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments;
- (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding;
- (5) examine the debtor or others related to collections;
- (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan;
- (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including, as reasonably and necessarily related, to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and
- (8) foreclose a lien, secure lien rights, or prepare any notice of lien.

(b) This Section 8.11 is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

8.12 Association Responsibility after Foreclosure. If the Association takes title to a Lot pursuant to a foreclosure, it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to any failure to pay Assessments.

ARTICLE 9: PROPERTY RIGHTS IN LOTS & COMMON AREA

9.1 General Easements to Common Area and Lots.

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

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

- 9.3 **Easements for Encroachments.** If any portion of the Common Area or any subdivision improvement encroaches upon any Lot, or if any Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the subdivision improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.
- (a) In accordance with the foregoing, there shall be an easement for air conditioner units that, at the time of the recording of this Declaration, encroach on the Common Area for the remaining life of the air conditioner. This easement shall expire when the air conditioner is replaced unless the Owner of the air conditioner receives approval from the Board to continue utilizing the Common Area for such purpose. The Owner shall maintain such easement area in the same manner as required for an Owner to maintain the Limited Common Area appurtenant to the Owner's Lot.
- (b) This Declaration creates no easements, express or implied, that permit a Lot Owner to maintain facilities or improvements on an adjacent Owner's Lot.
- 9.4 **Limitation on Easement.** An Owner's rights and license for the use and enjoyment of the Common Area shall be subject to any other limitation in the Governing Documents and the right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or open areas contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.
- 9.5 **Views.** Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.

ARTICLE 10: USE LIMITATIONS & CONDITIONS

- 10.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of § 57-8a-218, Subsections (1) through (13), except Subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 10.2 **Amenities.** Use of amenities within the Project, including but not limited to the recreation area, is limited to Owners, Occupants, and their guests. Use of the amenities is at the user's own risk.
- 10.3 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically

used, that is placed in, on, or outside of a Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Lot.

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

- (a) Any unclean, unhealthy, unsanitary, unsafe, unsightly, untidy, or unkempt condition or any condition noxious to the senses including but not limited to any condition that emits any foul, unpleasant, or noxious odors or any condition that causes any unreasonable noise or other unreasonable condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other Occupants at the Project;
- (b) Actions or activities tending to cause unreasonable embarrassment, discomfort, annoyance, distress or a disturbance to any other Occupant, their guests or invitees, particularly if police or the sheriff must be called to restore order;
- (c) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence is in any way illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project by other Occupants or their guests and invitees;
- (d) The failure to regularly remove rubbish, trash, refuse, waste, feces, dust, debris, and garbage from a Lot; and
- (e) The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions.

10.5 **Smoking.** It shall be a nuisance and prohibited under Section 10.4 of this Declaration to permit or cause any smoke to drift or otherwise enter into any Lot. Neither an Owner or Occupant complaining of smoke nor the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project or to any Lot to prevent drifting smoke from entering into that Lot or any patio associated with that Lot. It shall be the sole responsibility of the Owner causing, or whose tenant or invitee is causing, the smoke to prevent or stop smoke from entering any other Lot, which may require, if other attempts to stop it are unsuccessful, the termination of smoking. The Board may adopt Rules that further restrict smoking to certain designated smoking areas. The Association relies upon the definitions of the terms “e-cigarettes” and “smoking” as used in the Utah Indoor Clean Air Act (Utah Code Ann. § 26-38-2 et seq.) in defining such terms for this Section.

- (a) The term “e-cigarette”:
 - (1) Means any electronic oral device:

- (i) That provides aerosol or vapor of nicotine or other substance; and
 - (ii) Which simulates smoking through its use or through inhalation of the device; and
- (2) Includes an oral device that is:
 - (i) composed of a heating element, battery, or electronic circuit; and
 - (ii) marketed, manufactured, distributed, or sold as: an e-cigarette; e-cigar; e-pipe; or any other product name or descriptor, if the function of the product meets the definition of Subsection (a)(1).
- (b) The term “smoking” means:
 - (1) the possession of any lighted or heated tobacco product in any form;
 - (2) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains (i) tobacco or any plant product intended for inhalation; (ii) shisha or non-tobacco shisha; (iii) nicotine; (iv) a natural or synthetic tobacco substitute; or (v) a natural or synthetic flavored tobacco product;
 - (3) using an e-cigarette; or
 - (4) using an oral smoking device intended to circumvent the prohibition of smoking in this Section.
- (c) The Board may adopt reasonable rules and regulations to address new non-combustible tobacco products that may not otherwise fall into the prohibition against smoking in this section to expressly include such products in this smoking prohibition.

10.6 Temporary Structures. No structure or building of a temporary character, including, but not limited to, a tent, trailer, shack, storage pod, or dumpster, shall be placed upon the Project or used therein unless it is approved by the Board.

10.7 Parking. The Association may adopt additional Rules relating to the parking of vehicles within the Project by Owners, Occupants, and their respective family members, tenants, guests, and invitees, including, without limitation: (1) the right to remove or cause to be removed any vehicles that are improperly parked; (2) restrictions on the type and condition of vehicles allowed to be parked; (3) restrictions on the time period and duration of visitor or temporary parking; and (4) the assessment of fines to Owners who violate the Rules or their Occupants and guests who violate such Rules. Through the Rules, the Association may restrict or limit parking on the public roadways by Owners, Occupants, and their respective family members, tenants, guests, invitees and by other people associated with the use of the Lots. Unless otherwise permitted by the Association in the Rules, the following parking restrictions shall apply:

- (a) Only garages, driveways, and streets may be used for the parking of vehicles, and any parking of vehicles must comply with city, county, and state ordinances and laws.

- (b) Only licensed, regularly used, passenger vehicles may be parked in the street of the Project or in driveways, with the following exception:
 - (1) Moving trucks or commercial vehicles are permitted to park but only for the time reasonably necessary to complete any related loading or unloading of the vehicle.
 - (c) Unless fully enclosed within a garage, recreational vehicles (including, without limitation, trailers, campers, snowmobiles, OHV's, or boats), are prohibited from being stored or parked within the Project, other than for brief periods required for loading and unloading.
 - (d) Cars on blocks or non-running vehicles are not permitted within the Project unless they are fully enclosed within a garage.
 - (e) Notwithstanding any of the foregoing in Subsections 10.7(b)-(c), the Owner of Lot 18 may park a motorhome-type recreational vehicle in the paved driveway area immediately north of Lot 18.
- 10.8 **Outside Speakers and Amplifiers.** Owners shall not be permitted to have speaker or amplifier equipment for the projection of sound or music on or directed to the outside of any Dwelling without prior Board approval.
- 10.9 **Repairs.** No maintenance or repairs of any detached machinery, equipment, or fixtures, including, without limitation, motor vehicles, shall be made in the Project except:
- (a) within an enclosed garage;
 - (b) in the case of a motor vehicle emergency, in a driveway or on the street, but only for the time necessary to address the emergency, not to exceed 24 hours; or
 - (c) as may be permitted by the Board of Directors in the Rules.
- 10.10 **Holiday Decorations.** The Association may adopt additional Rules to regulate holiday decorations in the Project, to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Dwelling with the apparent purpose, in whole or in part, of making it visible to people outside of the Dwelling.
- 10.11 **Unightly Items.** The Board may adopt Rules regulating the removal, accumulation, and placement of any rubbish, debris, or unsightly material, conditions, or items. Unless and until the Board has adopted such Rules, the following shall apply:
- (a) except as may be allowed in Section 10.9, no vehicle, boat, or equipment shall be constructed, reconstructed, repaired, or abandoned within the Project;
 - (b) all rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Lots, Limited Common Area, Front Yard Areas, and parking strips and shall not be allowed to accumulate therein or thereon;

- (c) machinery and equipment not a part of the Lot shall be prohibited unless obscured from view of neighboring Lots, or unless otherwise approved by the Board;
- (d) clotheslines shall be permitted in the fenced-in rear yard Limited Common Area so long as they are not visible from the streets within the Project; and
- (e) plantings and landscaping must be properly nurtured and maintained.

10.12 Animals.

- (a) Owners may only keep animals in accordance with City, County, and State laws and ordinances. The Board may adopt Rules regulating animals in the Project. Unless otherwise restricted or allowed in the Rules, the only animals that may be kept in the Project are domestic animals generally kept in households, such as dogs, cats, birds, fish, and hamsters. Animals may only be kept subject to the Rules and requirements of this Declaration. Unless otherwise permitted or restricted by the Association in the Rules, no more than a maximum of six (6) small animals, to include no more than two (2) dogs, may be kept in a Lot or Dwelling. No livestock or poultry may be kept within the Project.
- (b) Notwithstanding the foregoing, no animal may be kept within a Lot which: (1) is raised, bred, kept, or maintained for any commercial purposes; (2) causes a nuisance; or (3) in the good faith judgment of the Board of Directors, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Directors may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All animal fecal matter shall be immediately cleaned up in the Project by the owner of the animal. The Board may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including, but not limited to requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, size of animals, and noise and barking limitations. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal and shall indemnify and hold harmless the Association and any other Owner from any loss, claim, or liability of any kind arising from or related to such pet or animal. Incessantly barking dogs will not be permitted and will result in fines.

10.13 Residential Occupancy. The Board may adopt Rules regulating trade or business activities conducted in the Project. Unless otherwise restricted or allowed by the Rules, no trade or business may be conducted in or from any Dwelling unless:

- (a) The business activity consists solely of work that is generally considered office work;
- (b) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling or Lot;
- (c) The business activity conforms to all zoning and legal requirements for the Project and the business activity;

- (d) The business activity does not involve the solicitation of Occupants or Owners of the Project;
 - (e) The business activity is consistent with the residential character of the Project, does not include the storage of dangerous products, and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners and Occupants of the Project;
 - (f) The business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Dwelling or Lot for such activity, and a description of any impact on the Project;
 - (g) The business activity will not result in the increase of the cost of any of the Association's insurance or shared utilities; and
 - (h) The Board's ongoing requests for information related to the business as necessary to determine compliance with this Section are responded to fully and completely.
- 10.14 **No Subdivision, Timeshare, or Recording by Owners of Terms & Conditions.** No Lot or Dwelling shall be split, subdivided, separated, or timeshared into two (2) or more Lots or Dwellings or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease only a part thereof. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot, any Dwelling, or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.
- 10.15 **Landscape Maintenance.** In addition to any other Owner responsibilities established by this Declaration, and unless responsibility is otherwise assigned to the Association, Owners shall be responsible for maintaining any landscaping on their respective Lot, Limited Common Area, Front Yard Area, and the parking strip between the Front Yard Area and the street. The Association may adopt Rules further regulating the landscape maintenance for these areas, including standards for repairs, weed control, etc.
- 10.16 **Lighting.** The Board may adopt rules setting forth exterior lighting standards and regulation. If such rules are adopted, then exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.
- 10.17 **Energy Conservation Equipment.**
- (a) Solar energy systems shall not be installed without prior written approval from the ARC. The installation of a solar energy system may be restricted by Rules adopted by the Association, except to prohibit installation of a solar energy system, as long as those Rules do not conflict with the limitations on solar energy system restrictions outlined in Section 57-8a-701 of the Act.
 - (b) No personal or home wind turbine system shall be constructed or installed on any Lot or Dwelling without prior written approval from the ARC. In no event will a turbine be permitted to be installed on the roof of a Dwelling or accessory.

structure without a structural analysis from a licensed engineer indicating that the roof can support the proposed turbine system.

10.18 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears after reasonable investigation under the circumstances that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

10.19 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Lot or the Project.
- (b) No one shall permit anything to be done or kept on a Lot or Dwelling which will result in the cancellation of insurance or which would be in violation of any public law, ordinance, or regulation.
- (c) Except as incidental to the storage of camping equipment, vehicles, and other normal maintenance equipment and items, no one shall use or permit to be brought into the Dwellings or Lots any flammable oils or fluids such as gasoline, kerosene, naphtha, benzene, other explosives, or other such articles that are abnormally hazardous.
- (d) Unless otherwise addressed in the Rules, fireworks are permitted in accordance with governing municipal, county, or state law.
- (e) Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from, or

through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substance(s) was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substance(s) on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

- (f) As used in this Section, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law including but not limited to the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

ARTICLE 11: INSURANCE

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand-alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** The Board of Directors may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage; and (4) a description of any flood insurance and material exclusions and limitations for that coverage. The report may also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be provided to any Owner upon request.
- 11.3 **Property Insurance.** The Association shall maintain a policy of property insurance covering the Common Area, including all buildings and improvements, building service equipment and fixtures thereon to the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Association's obligation to maintain.
- (a) The blanket policy shall exclude land and other items not normally and

reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to or otherwise permanently part of or affixed to Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.

- (b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft, and (2) all perils normally covered by "special form" property coverage.
- (c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (d) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000), an amount not less than ten thousand dollars (\$10,000).

- 11.4 **Earthquake Insurance.** The Association may purchase earthquake insurance as the Board deems appropriate.
- 11.5 **Flood Insurance.** If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, the Association may purchase flood insurance covering the Project or that portion of the Project located within the Special Flood Hazard Area. If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- 11.6 **Comprehensive General Liability (CGL) Insurance.** For so long as the Association has any obligation to maintain Common Area, the Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owners' membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.7 **Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board Members, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall, to the extent available: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under

any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

- 11.8 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that will provide coverage for: (1) an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) theft or embezzlement of funds by: (a) Officers and Board members, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.
- 11.9 **Workers' Compensation Insurance.** If the Association has any employees, the Board shall purchase and maintain in effect workers' compensation insurance for all employees, if any, of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.
- 11.10 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy: (a) are payable to an Insurance Trustee (defined in Section 11.11 below) if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if one is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary and is related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Lots. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, is irrevocable, and is binding on any heirs, personal representatives, successors, or assigns of an Owner.
- 11.11 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding fifty percent (50%) or more of the Allocated Interests, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) may require related to a loss and receipt or potential receipt of insurance proceeds.

- 11.12 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and, upon written request, to any Owner or Lender.
- 11.13 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.14 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.15 **Waiver of Subrogation Against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Lot Owner if an Owner resides in the Lot, and the Association's agents and employees.
- 11.16 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against any Person or entity at fault for the loss.
- 11.17 **Applicable Law.** This Declaration specifically subjects the Association to the insurance requirements and provisions in part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 12: DESTRUCTION OF IMPROVEMENTS

- 12.1 **Reconstruction.** In the event of partial or total destruction of a Common Area structure, or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:
- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors with active contractor licenses, including the obligation to obtain performance and lien payment bonds.
 - (b) The Board, or any Insurance Trustee, if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any.
 - (1) **Damage to a Portion of Project—Insurance Proceeds.**
 - (i) If a portion of the Project for which insurance is required under part 4 of the Act is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (i) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (ii) Owners holding at least seventy-five percent (75%) of the Allocated Interests in the Association vote not to rebuild.
 - (ii) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.
 - (c) If the Board, in good faith, determines that none of the bids submitted under this

Section reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain additional bids that it determines reasonably reflect such costs. Such determination shall be made by the Board as soon as possible.

- (d) The Board may engage the services of a reputable, licensed architect to advise and consult with the Board on all actions and decisions under this Section.
 - (e) The Board may contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Common Area in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 12.2 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer with regard to any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 12.3 **Repair of Lots and Limited Common Area.** The repair of any damage to a Lot or appurtenant Limited Common Area shall be made by and at the individual expense of the Owner(s) of that Lot. Notwithstanding the foregoing sentence, however, the Owner(s) of that Lot may still pursue any remedy or claim available to them under the law for the repair of any such damage.
- 12.4 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of insurance proceeds allocated to such Lot.

ARTICLE 13: EMINENT DOMAIN

- 13.1 **Taking of Common Area.** If a portion of the Common Area and facilities is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot or Limited Common Area, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration will be added to the general funds of the Association.
- 13.2 **Taking of Limited Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of, or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken will be divided among the Owners of the Lots to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 13.3 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration will apply.

- 13.4 **Total Taking of a Lot.** If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Lot and Allocated Interest regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Lot's Allocated Interest will automatically be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration that accomplishes the adjustment required for this Section. Any remnant of a Lot remaining after part of a Lot is taken becomes part of the Common Area.
- 13.5 **Partial Taking of a Lot.** Except as provided in Section 13.4, if part of a Lot is taken by eminent domain, or sold under threat thereof, so that such Lot may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Lot. Upon such a taking, that Lot's Allocated Interest in the Common Area shall remain the same.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area or any part thereof. If the taking involves all or part of any Lot or the Common Area, the award or proceeds will be payable to the Association for the use and benefit of the Owners and their Lenders as their respective interests may appear. This power-of-attorney is coupled with an interest, is irrevocable, and binds any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14: TERMINATION AND SALE OF PROJECT

- 14.1 **Required Vote.** Except as otherwise provided in Article 13, the Project may be terminated and sold only by the approval of Owners holding at least sixty-seven percent (67%) of the Allocated Interests and in compliance with any other applicable laws.
- 14.2 **Termination Agreement.** An agreement to terminate and sell the Project must be evidenced by the execution or ratification of a sale agreement, in the same manner as a deed, by the requisite number of Owners. The sale agreement must specify a date after which the sale agreement will be void unless it is recorded before that date. A sale agreement, including all ratifications of such sale agreement, becomes effective when it is recorded with the Salt Lake County Recorder's office.
- 14.3 **Sale of Project Following Termination.** A sale agreement under this Article must provide that the entire Project will be sold following termination.
- 14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project on the termination of the Project, provided that the contract is conditioned on the approval of the Owners. The contract is not binding on the Owners until approved in accordance with Sections 14.1 and 14.2 of this Declaration and any applicable laws. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners.

Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement or sale agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have a right to occupancy of the Common Areas in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

- 14.5 **Proceeds of Sale.** The Association, as trustee for Owners and Lenders as their interests may appear, shall hold the proceeds of any sale of real estate, together with the Association's assets. Proceeds of the sale must be distributed to Owners and Lenders according to their Allocated Interest. The interest of any Owner in such proceeds must not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Lots that were recorded before termination may enforce those liens in the same manner as any lien holder.
- 14.6 **Allocation upon Termination.** Unless provided otherwise herein, in a sale agreement or termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation must be made payable to the Association, which shall hold such proceeds for the benefit of the Owners and their Lenders.

ARTICLE 15: AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than fifty-one percent (51%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose in accordance with the Bylaws. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. The vote of approval for any one Owner of a Lot is sufficient if there are multiple Owners of the Lot, so long as any other Owner of the Lot does not vote inconsistently.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association or if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.

- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Board of Directors, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the Salt Lake County Recorder's office.
- 15.4 **Changes to Plat or Boundaries of the Association.** Unless otherwise required by Section 4.2(f), the Association may adopt an amended plat, supplemental plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot, that Owner of the modified Lot must consent in writing. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, (2) grants the Association power of attorney to sign necessary documents on each Owner's behalf as necessary for the agreement, amendment, or correction, and (3) consents that the president of the Association, on behalf of the Association and its Board, has the authority to execute any such amended plat, supplemental plat, or correction to the Plat on behalf of the Association and all Lot Owners in the Project.
- 15.5 **Amendment to Conform to Law.** The Board of Directors may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA, or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has significant experience and a regular practice in the area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section.
 - (b) The Board must unanimously agree to the amendment at the time it is recorded.
 - (c) The Board must provide to the Owners: (1) the proposed amendment instrument, (2) the language of this Section of the Declaration, (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit Owners to obtain financing, (4) the attorney opinion letter required for the amendment, and (5) a notice in which the Association (a) notifies the Owners that it intends to amend the Declaration pursuant to this Section, (b) provides notice to

the Owners of their right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

- (d) Within forty-five (45) days of providing the information to the Owners required by this Section, no more than thirty percent (30%) of the Owners may have objected to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section, the Board Members shall each sign the amendment instrument verifying that this Section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the Salt Lake County Recorder's office.

ARTICLE 16: INTERPRETATION, CONSTRUCTION, & APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, the Bylaws, and then the Rules.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.
- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been

inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

ARTICLE 17: NOTICE

- 17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Association.
 - (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address has been furnished, then to the street address of such Owner's Lot. Unless otherwise provided by law, such as provided in Utah Code § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective when received or five (5) days after such deposit, whichever occurs first.
 - (iii) By Electronic Transmission to an Owner which includes:
 - (A) By email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner

has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.

- (B) By facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Unless otherwise provided by law, any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.
 - (C) By text message to a phone number designated as a text-enabled phone and provided by the Owner for the purpose of Association communications; or a phone number to a text-enabled phone from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.
- (iv) By any other method that is fair and reasonable as provided for in the Act, the Governing Documents, or otherwise provided for by law.
- (2) Notwithstanding Subsection (a)(1) of this Section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.
 - (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association is not required to give more than one notice per Lot, whether electronic or not. In case any two (2) co-Owners receive conflicting notice demands, notice is proper if mailed by first-class mail to the Lot address.
 - (4) In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the primary Dwelling and any such posting may be removed by the Association the sooner of either: (a) two (2) days after the event or action for which notice was given; or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry.

- (1) **Emergency.** The Association shall not have the right to enter the interior of a Dwelling for an emergency, and may only enter a Dwelling as provided in Subsection (b)(2) below or with the permission of an Owner.
In case of an emergency or condition requiring immediate entry onto the area of a Lot that is not part of the interior of a Dwelling, as determined by the sole discretion of the Board or its authorized agent, before entry the Association shall: (i) knock on the door of the Dwelling and attempt to obtain permission to enter the Lot from an Occupant or Owner; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Lot on behalf of the Association, then wait one (1) minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entering the Lot to inform them of the entry.
- (2) The Association may only enter either an enclosed area of a Lot, or a Dwelling for the purposes permitted in this Declaration. If the Association determines that it needs to enter either an enclosed area of a Lot, or a Dwelling, then before entering, unless otherwise permitted under Subsection 17.1(b)(1), the Association shall:
 - (i) Give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (A) that the Association or its authorized Persons will enter, (B) the date and time of the entry, (C) the purpose of entering, (D) a statement that the Owner or Occupant can be present during the time the Association is on the Lot or inside the Dwelling, (E) the full names of any Person who will be entering, and the phone numbers and addresses of the Persons entering or of the company for whom the Persons entering are employed for the purpose of entering, and (F) any other information the Association deems appropriate to include; and
 - (ii) Post the written notice described above on the front door of the Dwelling on the Lot at least seven (7) days prior to entry.
- (c) **Notice to a Lender.** Notice to a Lender shall be delivered by first-class U.S. Mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit, whichever occurs first.
- (d) **Notice to Association from an Owner.** An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - (1) By a written notice delivered personally to a Board Member, which shall be effective upon delivery;
 - (2) By a written notice placed in the first-class U.S. Mail, postage prepaid, to the current registered business address of the Association. Any notice so

deposited in the mail shall be deemed effective when received, or five (5) days after such deposit, whichever occurs first;

- (3) By written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications or (2) that is emailed to an email address from which the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first;
- (4) By facsimile (whether to a machine or by other means) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first; or
- (5) By text message to a phone number designated as a text-enabled phone and provided by the Association for the purpose of Association communications, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.

ARTICLE 18: ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

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

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

ARTICLE 19: RESERVES

- 19.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area, pursuant to the following provisions:
- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments, as determined by the Board.
 - (b) **Amount.** In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
 - (c) **Owner Veto.** Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the Allocated Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
 - (d) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
 - (e) **Segregation of Reserves.** In accordance with Utah Code § 57-8a-211, the Association shall segregate money held for reserves from regular operating and other accounts and shall keep all reserve funds in an account, or accounts, in the name of the Association. The Association may elect to prudently invest money held in the reserves fund in a low-risk investment or high-yield saving account. The Board may determine by resolution the maximum amount of reserves that may be invested. The Association may not commingle reserve funds with the funds of any other person.
 - (f) **Use of Reserves.** Unless a majority of the Owners vote to approve the use of reserve fund money for that purpose, the Board may not use reserve fund money for (1) daily maintenance expenses; or (2) any purpose other than the purpose for which the reserve fund was established.
 - (g) **Reserve Analysis.** In accordance with Utah Code § 57-8a-211, the Board shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Board shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three

(3) years. The Reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

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

ARTICLE 20: LEASING AND NON-OWNER OCCUPANCY

20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and Non-Owner Occupancy of a Lot shall be governed by this Article, the Rules, and procedures adopted as allowed in this Article.

20.2 **Definitions.** For the purpose of this Article:

- (a) “Non-Owner Occupied” or “Non-Owner Occupancy” means:
 - (1) For a Lot owned in whole or in part by a natural individual or individuals, the Dwelling is occupied by someone when no individual Owner occupies the Dwelling as the individual Owner’s primary residence; or
 - (2) For a Lot owned entirely by one or more entities or trusts, the Dwelling is occupied by anyone other than: (i) the person for whom the entity or trust was created, or (ii) the owners of the entity.
- (b) “Non-Owner Occupant” means the Person(s) occupying the Non-Owner Occupied Dwelling.

- 20.3 **Permitted Rules.** The Board of Directors may adopt Rules requiring:
- (a) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.
 - (b) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration. The Association may charge a reasonable fee for the administration of Non-Owner Occupancy reporting and monitoring, but at no time will such fee be more than the actual costs incurred by the Association for such administration.
- 20.4 **Required Rules.** The Board of Directors shall adopt, by Rules or resolutions, procedures to:
- (a) Determine and track the number of Lots with Non-Owner Occupied Dwellings in the Project; and
 - (b) Ensure consistent administration and enforcement of the restrictions on Non-Owner Occupied Dwellings in this Declaration.
- 20.5 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Dwellings must comply with the following provisions:
- (a) As there is no limit on the number of Lots in the Project that may have Non-Owner Occupancy, any Owner, whether or not they leased or had a Non-Owner Occupied Dwelling prior to this Declaration being recorded, may lease or maintain a Non-Owner Occupied Dwelling subject to this Article 20, the Rules, and procedures adopted as allowed in this Article 20.
 - (b) If required in the Rules or if requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board.
 - (c) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least six (6) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident.
 - (d) A Non-Owner Occupant may not occupy any Dwelling for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not).
 - (e) No Owner may lease less than the entire Dwelling.
 - (f) Except as a non-paying guest of an Owner, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not).

- 20.6 **Exceptions for Certain Lot Owners and Lots.** Notwithstanding anything to the contrary in Section 20.5, the following described Lot Owners and Lots are exempt from any restriction on leasing or Non-Owner Occupancy requiring a Non-Owner Occupancy to be for a period of at least six (6) months:
- (a) A Lot Owner in the military during the period of the Lot Owner's deployment;
 - (b) A Lot occupied by a Lot Owner's parent, child, or sibling;
 - (c) A Lot Owner whose employer has relocated the Lot Owner for two (2) years or less;
 - (d) A Lot owned by an entity that is occupied by an individual who:
 - (1) has voting rights under the entity's organizing documents; and
 - (2) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
 - (e) A Lot owned by a trust or other entity created for estate planning purposes if the trust or estate planning entity was created for:
 - (1) the estate of a current resident of the Lot; or
 - (2) the parent, child, or sibling of the current resident of the Lot.
- 20.7 **Exceptions for Exempt Lots.** If a Non-Owner-Occupied Lot is exempt under Section 20.6(b), (d), or (e), then no written lease or rental agreement between the Owner and the Occupant is required.
- 20.8 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Dwelling shall be responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with the Governing Documents, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and any Manager shall not have any liability for any action taken pursuant to this Section and the Owner shall indemnify and pay the defense costs of the Association, the Board, and any Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Section.

ARTICLE 21: GENERAL PROVISIONS

- 21.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 **No Liability of Officials.** To the fullest extent permitted by applicable law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence.
- 21.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any,

shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

- 21.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area and facilities that may be sustained by reason of the negligent or intentional act of that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, including but not limited to guests and invitees of that Owner, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. The Association may levy a special Assessment, as set forth in Article 7 herein, against an Owner and the Owner's Lot for the cost of repair or replacement due to any such damage to the Common Area and facilities. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 **Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable and shall not be affected by the disability of any such Owner or Occupant.
- 21.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area and facilities that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot in this Association

and/or residing in this Association, Owners and Occupants agree that the Association and the Board of Directors are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 21.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a handicap (as defined by Federal law at the time the accommodation is requested) or disability (as defined by state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area and facilities, or the buildings, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

IN WITNESS THEREOF, in approving and adopting this Declaration and all exhibits hereto, the undersigned officer of the Association hereby certifies that the vote required by Article X, Section 4 of the Enabling Declaration and the required approval of first mortgagees consistent with the requirements of the Enabling Declaration, as affected by Section 57-8a-104 and 57-8a-210 of the Act, have been obtained. This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SUNBURST MEADOWS PLANNED UNIT DEVELOPMENT is executed as of the day and year written below.

DATED as of the 9TH day of November, 2020.

SUNBURST MEADOWS HOMEOWNERS' ASSOCIATION

By: Don G Campbell
 Name: DON G. CAMPBELL
 Its President

STATE OF UTAH)
) ss.
 COUNTY OF SALT LAKE)



On this 9th, day of November, 2020, personally appeared before me Don G Campbell, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the president, of the Sunburst Meadows Homeowners' Association (the "Association"), and that said document was signed by him/her on behalf of the Association with all necessary authority, and acknowledged to me that said Association executed the same.

Tracey Jensen
 Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The real property located in The Sunburst Meadows Amended Planned Unit Development Plat recorded in the Salt Lake County Recorder's office, more particularly described as follows:

BEGINNING AT A POINT SOUTH 00°01'25" EAST ALONG THE SECTION LINE 140.12 FEET AND WEST 806.82 FEET FROM THE EAST QUARTER CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 00°01'25" EAST 521.50 FEET; THENCE WEST 381.45 FEET; THENCE NORTH ALONG THE EAST LINE OF JORDAN VILLAGE SUBDIVISION 521.50 FEET; THENCE EAST 381.24 FEET TO THE POINT OF BEGINNING.

CONTAINS 4.565 ACRES.

Parcel Numbers

22314300010000	22314300130000	22314300250000
22314300020000	22314300140000	22314300260000
22314300030000	22314300150000	22314300270000
22314300040000	22314300160000	22314300280000
22314300050000	22314300170000	22314300290000
22314300060000	22314300180000	22314300300000
22314300070000	22314300190000	22314300310000
22314300080000	22314300200000	22314300320000
22314300090000	22314300210000	22314300330000
22314300100000	22314300220000	22314300340000
22314300110000	22314300230000	
22314300120000	22314300240000	

EXHIBIT B

**BYLAWS
FOR
SUNBURST MEADOWS
HOMEOWNERS' ASSOCIATION**

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BYLAWS
OF
SUNBURST MEADOWS
HOMEOWNERS' ASSOCIATION

These Bylaws are hereby adopted and established as the Bylaws of the Sunburst Meadows Homeowners' Association (the "Association"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and future Owners and Occupants.

ARTICLE I: DEFINITIONS

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Sunburst Meadows Planned Unit Development (the "Declaration"), as amended, shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

ARTICLE II: OWNERS

- 2.1 **Annual Meetings.**
- (a) **Requirement.** The Association shall hold an annual meeting of the Owners no less than once each calendar year.
 - (b) **Date.** Unless changed by the Board of Directors, the annual meeting of Owners shall be held on the third Wednesday in October of each year, the specific date and time of which will be set by the Board of Directors. The Board of Directors may from time to time change the date and time for the annual meeting of the Owners.
 - (c) **Purpose.** The Annual Meeting may be held for any, or all, of the following purposes:
 - (1) Electing members of the Board of Directors;
 - (2) Distributing and discussing the most recent financial report and budget statement;
 - (3) Reviewing and discussing the Rules;
 - (4) Discussing insurance issues and coverage;
 - (5) Distributing the most recent reserve study summary and permitting discussion on reserve funding options; and
 - (6) Transacting such other business as may properly come before the meeting.
 - (d) **Approval of Minutes.** The minutes of the Annual Meeting may be approved by the Board within ninety (90) days of the Annual Meeting. The minutes of each Annual Meeting, not previously approved at a Board meeting, shall be approved by a majority of the Owners in attendance at the following Annual Meeting.

- (e) **Election of Board Members.** If Board Member elections cannot be held on the day designated for the Annual Meeting of the Owners, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Board of Directors, the President, or upon the written request of Owners holding not less than thirty percent (30%) of the Allocated Interest of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President. Unless the purpose of the meeting is for budget disapproval under Section 7.2(d) of the Declaration, the President shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues. If the purpose of the meeting is for budget disapproval, the President shall call, provide notice of, and conduct a special meeting within thirty (30) days of receipt of the request that shall address budget disapproval, but no other issues.

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

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

2.5 Owners of Record. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30) days nor fewer than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Lots in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the Owner meeting.

2.6 Quorum. At any Owners' meeting, the presence (in person or by proxy in accordance with Section 2.7) of fifty percent (50%) of the Allocated Interest of the Owners at any duly called meeting of the Association will constitute a quorum for the adoption of decisions. If a quorum is not met at the meeting, or at any subsequently postponed meeting, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time one-half (1/2) of the previously required presence (in person or by proxy in accordance with Section 2.7) of Allocated Interest of

the Owners will constitute a quorum. The vote of the Owners representing a majority of the Allocated Interest of the Owners in attendance (in person or by proxy in accordance with Section 2.7), will decide any question brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration, or these Bylaws require a fixed percentage of Owners or Allocated Interest to approve any specific action (i.e., amending governing documents or changing voting rights), that percentage will be required to approve such action.

- 2.7 **Proxies.** At each Owners' meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owner's attorney when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such Board Member who has been authorized by the Association to accept proxies at the meeting.
- 2.8 **Votes.** With respect to each matter submitted to a vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one (1) vote for each Lot of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. The election of Board Members shall be by secret ballot. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot. In no event shall fractional votes be exercised in respect to any Lot.
- 2.9 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other means of member voting to the extent the means of voting is not otherwise prescribed by the Declaration or these Bylaws, and to the extent not prohibited by the Act and the Revised Nonprofit Corporation Act.
- 2.10 **Ballots and Written Consent.** The Association may act without calling a meeting of the members and without voting in person by utilizing either written consents consistent with Utah Code § 16-6a-707, as may be amended or renumbered; or may take action by written ballots consistent with Utah Code § 16-6a-709, as may be amended or renumbered. Any Owner may deliver written consents or ballots by electronic transmission. A written consent or ballot delivered by electronic transmission is considered to be written, signed and dated for purposes of action without a meeting if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission was sent by the member and the date it was transmitted.

- 2.11 **Meetings by Telecommunications.** Any or all of the Owners may participate in an annual or special meeting of the Owners by, or the meeting may be conducted through the use of, any means of communication by which all Persons participating in the meeting may hear each other during the meeting. A member participating in a meeting as allowed in this Section is considered to be present in person at the meeting. The Board may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.
- 2.12 **Minutes of Meetings.** The secretary shall take minutes of all Owners' meetings. The minutes shall include, at a minimum: (1) the identification of the Persons present at the meeting in person and by proxy, (2) the date of the meeting, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes of Owner meetings shall be made available to all Owners within thirty (30) days of each meeting.

ARTICLE III: BOARD OF DIRECTORS

3.1 Number, Tenure, Qualifications, and Election.

- (a) **Number of Members.** The Board of Directors shall be composed of between three (3) and seven (7) persons meeting the qualifications stated in the Declaration and these Bylaws. The specific number of Board Members on the Board of Directors shall be determined, and may be changed from time to time, by a resolution of the Board. Provided, however, that any change decreasing the number of Board Members below the number of Board Members on the Board at the time of the change shall not act as a means of removing Board Members in a manner other than as allowed in these Bylaws, and any such change will not become effective until vacancies on the Board (either through expiration of terms, resignations, or removals) bring the number of Board Members to the number of the change.
- (b) **Board Member Positions.** There shall be Board Member positions that include with the membership on the Board the officer positions of President, Vice President, Secretary, or Treasurer. Remaining Board Member positions do not include officer positions with Board membership. Only one office may be attached to a Board Member position, excepting in the case where the Board is made up of three (3) Board Members a Board Member position may include the offices of both Secretary and Treasurer.
- (c) **Board Member Requirements.** A Board Member must be at least eighteen (18) years old, an Owner or the spouse of an Owner, and must have their primary residence within Salt Lake County, Utah. Any candidate whose election or appointment would contravene these requirements shall be ineligible for election or appointment.
- (d) **Term.** The term of each Board Member shall be two (2) years. The terms of the Board Members shall overlap so that:

- (1) if the number of Board Members on the Board is even, half of the Board Members are elected in one year and the other half of the Board members are elected in the following year, and so on; or
 - (2) if the number of Board Members on the Board is odd, Board Members totaling half of the next number higher than the number of Board Members on the Board are elected in one year, and the remaining number of Board Members are elected in the following year, and so on.
- (d) **Nominations.** Nominations of Board Member candidates must be made from the floor by Owners present at a duly called meeting in which Board Member elections are held. A person not present at the meeting cannot be nominated unless a written statement signed by the person indicating that the person is willing to serve is submitted with such nomination.
- (e) **Election.** At each annual meeting of the Association, an election shall be held to fill any vacancies on the Board as follows:
- (1) **Officer Board Member Positions.** Board Member vacancies with the officer positions of President, Vice President, Secretary, or Treasurer will each be filled by a separate simple majority vote of the Owners representing the Allocated Interest of Owners in attendance (in person or by proxy in accordance with Section 2.7) at the annual meeting. For purposes of this section, “simple majority” means a majority in which the highest number of votes cast for the candidate exceeds the second-highest number of votes, and it does not require an absolute majority. If two (2) candidates have equal votes, then the issue shall be resolved by a coin toss.
 - (2) **Non-officer Board Member Positions.** Board Member vacancies that do not include officer positions will be filled by a simple majority vote of the Owners representing the Allocated Interest of Owners in attendance (in person or by proxy in accordance with Section 2.7) at the annual meeting. If (2) candidates have equal votes, then the issue shall be resolved by a coin toss.
- (f) **Disqualification.** If any Board Member is alleged to not meet the qualification requirements in the Declaration and these Bylaws and any Board Member is notified of or discovers this alleged lack of qualification, the Board of Directors shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member’s membership on the Board of Directors shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board of Directors established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board of Directors, the decisions and actions of the Board of Directors and that Board Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in

this Subsection 3.1(f) or until the Board Member is disqualified if no such notice is provided.

- (g) **Removal.** Any Board Member may be removed at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose. The notice for the special meeting must state that the purpose, or one of the purposes, of the special meeting is removal of the Board Member.

3.2 Meetings.

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

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

Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

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

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

- (a) Any action required or permitted by law or the governing documents to be taken at a Board meeting may be taken without a meeting if each Board Member consents in writing (i.e. via letter or electronic transmission).
- (b) The following apply to an action taken pursuant to Subsection 3.3(a):
 - (1) Action is taken when the last Board Member to consent signs a writing describing the action taken, unless, before that time, any Board Member revokes a previously given consent by sending a writing signed by that Board Member to the Secretary or person the Board authorized to receive the revocation.
 - (2) Action is effective at the time taken unless the Board establishes a different effective date.

- (3) A communication satisfies the requirement of “describing the action taken” in Subsection 3.3(b)(1) if:
 - (i) It is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
 - (ii) It is in the form of a facsimile and it includes, either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
 - (iii) The writing from the Board Member sufficiently describes or restates the proposed action.
- (c) Any action required or permitted by law or the governing documents to be taken at a Board meeting may also be taken without a meeting if notice is transmitted in writing by letter or electronic transmission to each Board Member and by the time stated in the notice:
 - (1) Each Board Member:
 - (i) Signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
 - (ii) Fails to demand in writing that action not be taken at a meeting;
 - (2) The affirmative votes in writing for the action received by the Association, and not revoked, 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 were present and voted; and
 - (3) The Association has not received a written demand by a Board Member that the action be taken at a meeting, other than a demand that has been revoked pursuant to Subsection 3.3(d)(3).
- (d) The following apply to an action taken pursuant to Subsection 3.3(c):
 - (1) The notice transmitted must state: (i) the action to be taken; (ii) the time by which a Board Member must respond to the notice; (iii) that failure to respond by the time stated in the notice will have the same effect as: (a) abstaining in writing by the time stated in the notice, and (b) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (iv) any other matters the Association determines to include.
 - (2) Failure by a Board Member to demand in writing that the action not be taken without a meeting by the time stated in the notice constitutes waiver of the right to demand a meeting.
 - (3) A Board Member may revoke a vote, abstention, or demand given by a revocation in writing received by the Association by the time stated in the notice.

- (4) Action taken will be effective at the time stated in the notice, unless the notice specifies a different effective date.
- (e) For purposes of this Section 3.3:
 - (1) "Writing" refers to an email, letter, facsimile, or any other physical or other electronic transmission.
 - (2) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
 - (3) An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection 3.3(c) is considered to be written, signed, and dated if the electronic transmission is delivered with information from which the Association can determine:
 - (i) That the electronic transmission is transmitted by the Board Member; and
 - (ii) The date on which the electronic transmission is transmitted.
 - (4) Any response to any electronic communication must be:
 - (i) To the address of the sender using the same address and means of communication as was used to send the request for consent of an action, such as email, facsimile, or hand delivery; or
 - (ii) To any address in regular use, electronic, telephonic, or physical, by the Person sending the request.

3.4 **Compensation.** A Board Member may only receive compensation for services the Board Member renders to the Association as a Board Member if compensation for that Board Member or the Board Member's position on the Board, as well as the rate of compensation to be given, have first been approved by a vote of at least fifty-one percent (51%) of Owners in attendance at a duly called member meeting pursuant to the provisions of the Bylaws. Otherwise, no Board Member shall receive compensation for any services that the Board Member may render to the Association as a Board Member. Compensation approval for a Board Member or a Board Member's position on the Board may be terminated by a vote to terminate of at least fifty-one percent (51%) of Owners in attendance at a duly called member meeting pursuant to the provisions of the Bylaws. A Board Member may be reimbursed for expenses incurred in the performance of the Board Member's duties to the extent such expenses are approved by the Board of Directors.

3.5 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose. If the Owners vote to remove all of the members of the Board of Directors, they shall immediately thereafter and at the same meeting elect new members of the Board of Directors using the procedures normally applicable for election of Board Members at an annual meeting. If the Owners vote to remove less than all of the

members of the Board of Directors, the Owners may vote to elect replacement members at the special meeting. If the Owners vote to remove less than all of the members of the Board of Directors and either due to inadvertence or choice do not elect replacements at the special meeting, the remaining members of the Board of Directors, by majority vote, shall appoint replacement members for the remainder of the term of the Board Members who were removed.

- 3.6 **Vacancies.** If vacancies shall occur in the Board of Directors for any reason other than removal of a Board Member by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may remain. Any vacancy in the Board of Directors occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of that Board Member's predecessor.

ARTICLE IV: OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer.
- 4.2 **Subordinate Officers.** The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be members of the Association.
- 4.3 **Vacancies.** During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.
- 4.4 **The President.** The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (1) the right to control the order of the meeting; (2) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order;" and (4) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. Association checks for more than fifty dollars (\$50) shall require the signature of both the President and the Treasurer. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board of Directors approval as is necessary and prudent to preserve and protect the Property. The President shall be responsible for the duties of any other office while that office is vacant.

- 4.5 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Board.
- 4.6 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep. The Secretary shall execute any necessary communication and notice with the Owners. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board.
- 4.7 **The Treasurer.** The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. Association checks for more than fifty dollars (\$50) shall require the signature of both the Treasurer and the President. Unless the Board chooses to have the preparation and filing of taxes done by an outside source or otherwise delegated, the Treasurer shall prepare and file annually required tax documents of the Association. The Treasurer shall send notices to Owners with past due accounts in accordance with any procedure established by the Association for dealing with past due accounts. The Treasurer shall ensure the Association is properly registered with the Utah Department of Commerce Homeowner Associations Registry. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.
- 4.8 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Directors.

ARTICLE V: SUB-COMMITTEES

- 5.1 **Designation of Sub-Committees.** The Board of Directors may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any Sub-Committee at any time.
- 5.2 **Proceedings of Sub-Committees.** Each Sub-Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

- 5.3 **Quorum and Manner of Acting.** At each meeting of any Sub-Committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board.
- 5.4 **Resignation and Removal.** Any member of any Sub-Committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Sub-Committee designated by the Board.
- 5.5 **Vacancies.** If any vacancy shall occur in any Sub-Committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled by the Board.

ARTICLE VI: INDEMNIFICATION

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

- 6.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association by the Board of Directors, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII: AMENDMENTS

- 7.1 **Amendments.** Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative approval of Owners of Lots holding at least fifty-one percent (51%) of the Allocated Interest in the Association. The approval required to amend the Bylaws may be obtained by written consent, ballot, or vote. The approval of any one Owner of a Lot is sufficient for the Allocated Interest of that Lot if there are multiple Owners of the Lot.
- 7.2 **Execution of Amendments.** After obtaining the required approval, an amendment shall be signed by the President of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the Salt Lake County Recorder.

ARTICLE VIII: WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) If the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue was made at the meeting.
 - (b) If the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date the meeting was held.
 - (c) If the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date of the meeting.
 - (d) If the objecting person was not in attendance at the meeting and did not have any notice of the meeting, actual or proper, before it occurred, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the

objecting person's receipt of actual or constructive notice of the action, vote, or decision that is the subject of the particular procedural issue.

- (e) For any action, vote, or decision that occurred without a meeting, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the objecting person's receipt of actual or constructive notice of the occurrence of the action, vote, or decision that is the subject of the particular procedural issue.

8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other law that is alleged to have been violated, and shall include a brief statement of the facts supporting the claimed violation.

8.3 **Irregularities that Cannot Be Waived.** The following irregularities cannot be waived under the prior Sections:

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

8.4 **Affirmative Waiver.** An Owner may affirmatively waive any notice required by the Declaration, Bylaws or other law. Any waiver specifically described in the Declaration or Bylaws may be accomplished as described therein and any waiver not described in the Declaration or Bylaws shall be made as follows: (i) in writing; (ii) signed by the Owner entitled to the notice; and (iii) delivered to the Association for: (A) inclusion in the minutes; or (B) filing with the corporate records. A waiver may be communicated by electronic transmission.

ARTICLE IX: SMOKING

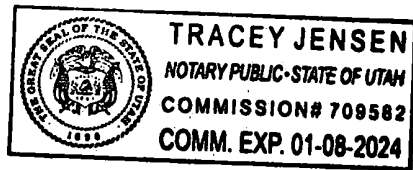
9.1 **Smoking.** Smoking within the Project is only restricted to the extent set forth in Section 10.5 of the Declaration, which Section is incorporated herein by this reference.

DATED as of the 9th day of November, 2020.

SUNBURST MEADOWS HOMEOWNERS' ASSOCIATION

By: Don G. Campbell
Name: DON G. CAMPBELL
Its President

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)



On this 9th, day of November, 2020, personally appeared before me Don G Campbell, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the president, of the Sunburst Meadows Homeowners' Association (the "Association"), and that said document was signed by him/her on behalf of the Association with all necessary authority, and acknowledged to me that said Association executed the same.

Tracey Jensen
Notary Public