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**Covenants, Conditions, and Restrictions for Copper Rim Furniture
Row Association, Inc.**

In Reference to Tax ID Number(s):

20-26-457-005 and 20-26-457-004

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR**

**COPPER RIM FURNITURE ROW
ASSOCIATION, INC.**

A Commercial Development

West Jordan, Salt Lake County, Utah

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COPPER RIM FURNITURE ROW ASSOCIATION, INC.**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COPPER RIM FURNITURE ROW ASSOCIATION, INC. ("Declaration") is adopted by CW Copper Rim 1, LLC, a Utah limited liability company (the "Declarant") and is effective as of the date it is recorded in the Salt Lake County Recorder's Office.

RECITALS

A. Declarant is the owner of certain real property in Salt Lake County, which is more particularly described on Exhibit A attached hereto and made a part hereof. By executing and recording this Declaration, the undersigned declares that the property described in Exhibit A, and any additional property made subject to this Declaration in the future by amendment or supplement, is subject to the terms, covenants, conditions, and restrictions set forth in this Declaration and such property shall constitute the planned commercial development of "Copper Rim Furniture Row" (the "Project").

B. The Declaration, and any amendment or supplement thereto, shall run with the title to the Project, shall govern the use of such property within the Project, and shall be binding upon current and future Owners of any portion of the Project and their respective heirs, successors, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to any land within the Project, Owner joins in and accepts the intent, purposes, and objectives of this Declaration and agrees to be bound by it.

C. The Project is within Phase 1 of the Copper Rim Commercial Park ("CRCP Project") and is identified as Lot 2. The Project borders the larger Copper Rim Commercial Park that is anticipated to be governed by the "Copper Rim Commercial Park Association, Inc." ("CRCP Association").

D. The Project contains land that constitutes a portion of the primary access roadway utilized by the Project and the commercial lots within the CRCP Project for ingress/egress purposes. This primary access roadway is accessed from Copper Rim Drive. The portion of the primary access roadway that is situated upon Lot 2 shall be referred herein as the "Lot 2 Roadway". See Exhibit D.

E. Declarant has created the Copper Rim Furniture Row Association, Inc. ("Association") which entity shall possess the power to manage and maintain the Project, administer and enforce this Declaration, and to collect and disburse assessments and charges hereinafter created in connection with its operations and responsibilities. It is intended that this Declaration shall serve as a binding contract between the Association and Owner; however, nothing herein, is intended to create a contractual relationship between Declarant and the Association or Declarant and Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

F. Within the CRCP Project, it is anticipated that lots will be developed containing commercial Buildings with singular ownership, or such lots may be divided or combined with multiple Buildings placed thereon, in the discretion of Declarant. The CRCP Project will be subject to its own declaration of covenants, conditions, and restrictions ("CRCP Declaration") but the CRCP Declaration will not be recorded against this Project, nor will the Owner of Lot 2 be a member of the CRCP Association. Similarly, this Declaration will not be recorded against the CRCP Project and none of the lots therein will be a member of the Association. Notwithstanding the foregoing, the Association and the CRCP Association shall enter into a joint use, cost sharing, and easement agreement pertaining to the Lot 2 Roadway ("CRCP Agreement") in the form attached hereto as Exhibit E.

G. The Bylaws of the Association are attached hereto as Exhibit C and are incorporated herein by this reference.

NOW, THEREFORE, Declarant does hereby declare that all real property within the Project shall be held, sold, conveyed, transferred, leased, subleased, used, and occupied subject to the covenants, conditions, restrictions, and easements set forth herein, all of which shall run with the Project and all portions thereof and shall be binding upon all parties having or acquiring any right, title, or interest in and to all or any portion of the Project, and the respective heirs, successors, and assigns of such parties.

ARTICLE I – DEFINITIONS

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1 "**Act**" shall mean the Community Association Act codified beginning at Utah Code § 57-8a-101 *et seq.*, in effect at the time this Declaration is recorded, and as such may be amended from time to time.

1.2 "**Allocated Interest**" shall mean the interest of Owner applicable for the purposes of voting as a member of the Association, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. The Allocated Interest of the Lot shall be one hundred percent (100%).

1.3 "**Articles**" shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any, formed for the Association.

1.4 "**Assessment**" shall mean any monetary charge imposed or levied on Owner by the Association as provided for in this Declaration.

1.5 "**Association**" shall refer to the COPPER RIM FURNITURE ROW ASSOCIATION, INC. the membership of which shall include Owner. The Association may be incorporated as a nonprofit corporation. If Owner is ever organized as another type of entity or if Owner or any future Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.

1.6 "**Board Member**" or "**Director**" shall mean a duly qualified and elected or appointed member of the Board of Directors.

1.7 "**Board of Directors**" or "**Board**" shall mean the governing board with primary

authority to operate and manage the affairs of the Association.

1.8 **"Building"** shall mean any commercial structure built or to be built on the Lot within the Project and shall include all building materials (exterior and interior), equipment, and facilities related thereto.

1.9 **"Bylaws"** shall mean the Bylaws of the Association attached as Exhibit C and all amendments thereto. No amendment to the Bylaws shall be effective until it is recorded.

1.10 **"Common Area"** shall mean the Lot 2 Roadway. Common Area shall not include any land, roads, and associated utilities dedicated to and accepted by a municipality or utility company (if any).

1.11 **"Common Expenses"** shall mean the actual and estimated costs incurred or assessed by the Association in fulfilling its duties for the general benefit of Owner and the Association including, but not limited to: (a) costs resulting from the CRCP Agreement; (b) any maintenance, management, operation, repair, and replacement of the Common Area, including snow removal that may be undertaken by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; and (d) 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 **"Control Period"** shall mean the period of time during which the Declarant may act as the Board of Directors or appoint Board Members. Such period of time shall commence on the date this Declaration is recorded and shall terminate when the Declarant or its successors executes and records a written waiver of its right to control the Association. The Special Declarant Rights contained within this Declaration may last beyond the Control Period for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.13 **"CRCP Agreement"** shall mean the joint use, cost sharing, and easement agreement entered into between the Association and the CRCP Association in the form attached hereto as Exhibit E.

1.14 **"CRCP Association"** shall mean the association subject to and created under the CRCP Declaration.

1.15 **"CRCP Declaration"** shall mean the declaration of covenants, conditions, and restrictions recorded against the CRCP Project.

1.16 **"CRCP Project"** shall mean the Copper Rim Commercial Park made subject to the CRCP Declaration.

1.17 **"Declarant"** shall mean CW Copper Rim 1, LLC, a Utah limited liability company, or its successors or assigns. Concurrently with the sale of the Lot by Declarant to a third party, Declarant shall assign all of its status and rights as Declarant of the Association and the Project to the purchaser of the Lot. For clarity, Declarant shall continue as and remain Declarant of the CRCP Association and the CRCP Project. Upon such assignment, all references in this Declaration to "Declarant" shall mean the Owner of the Lot.

1.18 **"Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions for Copper Rim Furniture Row Association, Inc., including all attached exhibits,

which are incorporated by reference, and any and all amendments to this Declaration.

1.19 “**Governing Documents**” shall mean the Declaration, Plat, Articles, Bylaws, Rules, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project.

1.20 “**Lender**” shall mean a holder of a first mortgage or deed of trust on the Lot.

1.21 “**Lot**” shall mean Lot 2. The term Lot shall include any Building, structure, or other improvement constructed thereon.

1.22 “**Lot 2 Roadway**” shall mean the portion of the primary access roadway that is located upon the Lot, which is also contained within the Project and will be utilized by Owner and one or more of the lots within the CRCP Project. See Exhibit D. The Lot 2 Roadway shall be the only Common Area.

1.23 “**Manager**” shall mean any entity or Person engaged by the Board of Directors to manage the Project.

1.24 “**Member**” shall mean and refer to Owner.

1.25 “**Occupant**” shall mean any Person working, visiting, using, entering into, or staying in a Building in the Project, including, without limitation, Owner, employees, contractors, tenants, lessees, guests, representatives, and invitees of Owner or an Occupant. Occupants shall be bound by the restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.26 “**Owner**” shall mean the Person or Persons who are vested with record title to the 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. Owner is automatically a Member of the Association. However, there shall be only one membership per Lot.

1.27 “**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.

1.28 “**Plat**” shall mean the plat of the Lot (not to include the plat of Lot 1). The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.29 “**Project**” or “**Property**” shall mean the property described in Exhibit A and all land, structures, and improvements thereon including the Lot, roads, open spaces, and the Common Area.

1.30 “**Rules**” shall mean and refer to the rules, regulations, and policies adopted by the Board for the Association.

1.31 “**Supplemental Declaration**” shall mean a document recorded with the Salt Lake County Recorder by the Declarant or Association to make additional real property subject to the terms of this Declaration, or which withdraws real property from the restrictions of this Declaration.

1.32 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

ARTICLE II – THE PROJECT

2.1 **Submission.** The real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant confirms that that the Project and the Lot or any parcel of land within the Project 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 covenants running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in the Lot or any parcel of property within the Project, Owner consents to, and agrees to be bound by each and every Term and Condition in the Governing Documents.

2.2 **Purpose.** Declarant intends that this Declaration establish a governance structure and a system of standards and procedures for the maintenance of the Lot 2 Roadway within the Project only. The Association is intended to be an integral part of the Project as it will operate and maintain the Common Area and shall administer and enforce this Declaration and the other Governing Documents referenced in this Declaration for the benefit of Owner.

2.3 **Nature of the Project.** The Property is a commercial development consisting of one commercial Lot and Buildings with parking lots, access roads, landscaped areas, sidewalks, and other necessary commercial facilities. The densities and uses for the Project may be set forth on the Plat and may be further defined or clarified in development agreements with governmental authorities.

2.4 **Project Name.** The Project is named “Copper Rim Furniture Row” and is located entirely in Salt Lake County. The name used by the Declarant for the Project may be different than the names identified on development agreements and the Plat. The Association and the Project are not a cooperative.

ARTICLE III – PROJECT STRUCTURE & ORGANIZATION

3.1 **The Association.** The Declarant has established the Copper Rim Furniture Row Association, Inc. as the entity responsible for administering the Project in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any right and powers that may reasonably be implied under the Governing Documents. The Members of the Association shall be Owner of the Lot within the Project. The duties and powers of the Association shall relate the Project as a whole and the ownership, use, and maintenance of the Common Area, including the imposition of assessments for such purposes.

3.2 **Allocated Interest.** The Lot is entitled to a vote equal to its Allocated Interest for all matters related to the Association that Owner is permitted or required to vote or approve, and such votes shall be cast in accordance with the Bylaws. As of the date of this Declaration, the Lot has an Allocated Interest of one hundred percent (100%) of the total Allocated Interests of the Association. The Allocated Interest of the Lot shall not be altered without the express affirmative written consent of at least sixty-seven percent (67%) of the total Allocated Interests of the Association. A recorded amendment or Supplement to this Declaration describing the

approved changes is required to modify Allocated Interest amounts or calculations.

3.3 **Declarant Voting Rights.** The Declarant shall be entitled to a vote equal to twenty (20) times the Allocated Interest assigned to any Lot the Declarant owns in the Project for all matters in which Members are entitled to vote. Declarant's voting rights shall be tied to Declarant's Lot ownership and accordingly, shall extend beyond any termination of the Control Period, so long as the Declarant owns the Lot. The foregoing voting rights are to be in addition to all Special Declarant Rights contained in the Governing Documents.

ARTICLE IV – ORGANIZATION & GOVERNANCE OF ASSOCIATION

4.1 **Organization.** The Association shall serve as the governing organizational body for the Project. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act and the Governing Documents. The Association shall have all rights and powers granted to it under the Act and the Governing Documents.

4.2 **Legal Organization.** The Association is intended to be organized as a non-profit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, it shall automatically be succeeded by an unincorporated association of the same name vested with all property, powers and obligations of the nonprofit corporation and the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve Owner from paying Assessments and abiding by all Terms and Conditions contained in this Declaration.

4.3 **General Powers and Obligations.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of an owners association pursuant to the Act, or any successor thereto;
- (d) The powers, duties, and obligations not reserved specifically to Owner; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of Owner.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

4.4 **Membership.** Membership in the Association shall at all times consist exclusively of Owner. Owner shall be a Member of the Association so long as Owner has an ownership interest in the Lot and such membership shall automatically terminate when Owner ceases to have an ownership interest in the Lot. Upon the transfer of an ownership interest in the Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to the Lot is held by more than one Person, the membership

appurtenant to the 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.

4.5 Record of Ownership. Owner shall promptly notify the Association of any change in ownership of the Lot by providing the conveyance information to the Secretary of the Association who shall maintain a record of ownership of the Lot. Any cost incurred by the Association in obtaining the information about Owner as specified herein which is not furnished by Owner shall nevertheless be at the expense of Owner and shall be reimbursed to the Association as an Individual Assessment.

4.6 Member Voting. The Lot is entitled to a vote based on its Allocated Interest in the Association, subject to any limitations on voting set forth in this Declaration and Bylaws, or limited by the Special Declarant Rights. Member voting shall be conducted as set forth in the Bylaws. If there is more than one Owner of the Lot, the vote relating to the Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose, except towards establishing a quorum.

4.7 Board of Directors. The governing body of the Association shall be the Board of Directors. The Board of Directors shall make all decisions and take all actions on behalf of the Association unless a decision or action is specifically required by the Governing Documents to be subject to Owner vote. During the Control Period, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint all Board members. After the Control Period ends, the Board of Directors shall be elected by the Members of the Association pursuant to the election and qualification provisions of the Bylaws. 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 the 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.

Notwithstanding anything to the contrary in this Section, Declarant appointed Board members shall not be bound by qualification requirements or any other requirements in the Bylaws.

4.8 Liability. To the fullest extent permitted by applicable law, Board Members and officers of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any act, error, negligence, or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. If a Board Member or any officer of the Association (including the Declarant and its appointees) is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall defend, indemnify, and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

4.9 No Reliance on Actions Contrary to Governing Documents. No one may rely

upon any authorization (from the Board of Directors or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel, waiver, or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing the 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.

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

4.11 **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

ARTICLE V – ASSOCIATION RIGHTS & RESPONSIBILITIES

5.1 **General Rights.** The Association shall have the following rights and responsibilities in addition to all other rights set forth in the Governing Documents or provided by the Act and other applicable law. The Association may also take any action reasonably necessary to effectuate any such right, privilege, or purpose.

5.2 **Maintenance.** The Board shall make provisions for completing all maintenance, repair, and replacement requirements of the Association, if any. 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.

5.3 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.

5.4 **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.

5.5 **Title to the Common Area.** The Common Area may not be owned by the Association. Owner may retain title to portions of property maintained by the Association; notwithstanding the foregoing, the Association shall have a perpetual easement to the Common Area and for the purpose of carrying out its duties and fulfilling its obligations under the Declaration. Neither the conveyance of title to the Lot to individual purchasers that may include the Common Area, nor any other provision of the Declaration, shall be construed to create a contractual relationship between the Association and Declarant.

5.6 **Hiring Managers and Delegating Responsibilities.** The Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owner, 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.

5.7 **Rules.** The Association shall have the authority to promulgate and enforce Rules for the regulation and operation of the Project. This provision is intended to be interpreted broadly and permit the Association to adopt rules governing all activities and uses within the Project which the Association may legally enforce. If Rules are adopted, they shall be consistently and uniformly enforced. Rules may be different for the various product types or uses. 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 only to a judicial determination, if any is timely sought. During the Control Period, the Declarant and the Declarant appointed Board (if any) shall be exempt from the rulemaking procedures of Utah Code §57-8a-217. Rules shall not materially and adversely affect the use or operations of the Building(s) on a given Lot.

5.8 **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 Owner fails to pay Assessments; (3) bring suit for legal or equitable relief for any lack of compliance with any provisions of this Declaration or Rules promulgated by the Board; (4) exercise self-help or take action to abate a violation in any situation which requires prompt action, or within a reasonable time in a non-emergency situation after notice has been given to the offending Owner; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. Before exercising any such enforcement rights, except in an emergency involving the health and safety of people or property, the Association shall provide Owner with a notice of violation and give Owner at least 20 days to cure said violation.

5.9 **Joint Use Agreements.** The CRCP Agreement shall govern the Lot 2 Roadway. The Association shall have the right to enter into other joint use agreements with neighboring property owners and/or owners/commercial associations that benefit Owner. The terms of these other joint use agreements shall be approved by the Board. Any funds received under a joint use agreement shall be used to reduce the total Common Expenses of the Association, or deposited into a reserve account, as applicable.

5.10 **Reserve Fund.** To the extent required by law, the Association shall establish and fund a reserve fund for the long-term maintenance, repair and replacement of Common Area and shall obtain and update a "Reserve Analysis" as required in this Declaration and the Act. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. The Declarant shall have no duty to obtain a Reserve Analysis or to maintain a reserve fund during the Control Period pursuant to Utah Code §57-8a-211(10).

5.11 **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted subject to the limitations set forth in Article XVI.

5.12 **Loans.** The Association shall have the authority to obtain loans for the efficient development of the Project and operation of the Association. The Association may use assets of the Association as collateral for financing and may also provide any other security as may be necessary for the loan, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owner. A majority vote of the Board shall be required prior to

obtaining any loan. Notwithstanding the foregoing and anything to the contrary in this Declaration, no Lot shall be used as security for any loan to the Association without that Owner's express and notarized consent. Loan expenses and payments shall be a Common Expense.

5.13 **Other Necessary Rights.** The Association and the Board shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

ARTICLE VI – MAINTENANCE, REPAIR, AND REPLACEMENT

6.1 **Maintenance by the Association.** The Association shall pay all expenses associated with the Common Area together with all improvements thereon, including, (i) the Lot 2 Roadway and (ii) any property or improvements that a municipality may require Lot 2 and the Association to maintain (regardless of whether such property is owned by the Association, Owner, or a governmental entity). The CRCP Association shall maintain the Lot 2 Roadway and share the expenses of such maintenance with the Association pursuant to the CRCP Agreement. The Board of Directors may determine, in its sole discretion, the scope of its maintenance obligations and an appropriate maintenance standard for the Common Area, so long as the Common Area is maintained in the best interests of Owner and the Project. If any allocation of maintenance or repair responsibility in this Declaration is ambiguous, then the Board shall have the sole discretion and authority to adopt a Board resolution that assigns such maintenance or repair responsibility to Owner (if such areas are located on the Lot) or to the Association as the Board so determines is in the best interests of the Association and its Members.

Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall not be obligated to maintain any road, utility, park, parcel, or utility system or component which is owned or maintained by a municipality or utility company.

6.2 **Maintenance by Owner.** Except as otherwise noted herein, Owner shall furnish and be responsible for, at Owner's own expense, all of the maintenance, repair, and replacement of all landscaping and improvements upon the Lot, all of which shall be kept in good condition and repair, and in a clean and attractive condition.

6.3 **Landscaping along Lot 2 Roadway.** All landscaping adjacent to or near the Lot 2 Roadway shall be maintained in a clean and attractive condition as reasonably determined by the Board. Owner is responsible for that portion of landscaping adjacent to the Lot 2 Roadway that is located on the Lot.

6.4 **Assessment of Maintenance to Specific Owner.** If the need for maintenance or repair is caused by the willful or negligent acts of Owner, or through the willful or negligent acts of the Occupants, guests, tenants, or invitees of Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment to which the Lot is subject. The Board shall have the sole authority and discretion to decide whether Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice (of at least thirty (30) days) and an opportunity to cure before exercising the power granted herein.

6.5 **Default in Maintenance.** If Owner or an Occupant fails to: (1) maintain the Lot as required in the Governing Documents or (2) make repairs otherwise required of 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 Lot in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents and shall give written notice to Owner or such Occupant stating 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 reasonable period of time as determined by the Board. If Owner or the Occupant fails to carry out such action within the period specified by the notice (which shall be no less than thirty (30) days, except in the case of an emergency), then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess Owner for all costs associated therewith. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Lot, including reasonable attorney fees.

6.6 **Utilities.** The charges for utilities that are metered separately to the Lot or any Building shall be the responsibility of Owner. In the event water, electrical, sewer, or other utilities are metered collectively for the entire Project, or metered separately for the Common Area that the Association maintains, then the Association shall be responsible for paying for such utility expenses, which expenses shall be a Common Expense of the Association and shall be paid through regular assessments.

ARTICLE VII – [INTENTIONALLY LEFT BLANK]

ARTICLE VIII – BUDGET & ASSESSMENTS

8.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety, and welfare of Owner; the management, maintenance, care, preservation, operation, and protection of the Common Area; enhancing the quality of appearance within the Project; enhancing and preserving the value of the Project; any purpose permitted in the Act; and in the furtherance of carrying out or satisfying any other duty or power of the Association.

8.2 **Budget.** The Board is authorized and required to adopt an annual budget no later than thirty (30) days prior to the beginning of each fiscal year. The Board may revise that budget from time to time as the Board deems appropriate. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate. The budget shall be available to Owner, upon request, no later than thirty (30) days after the adoption of the proposed budget or any revised budget. Each year the Board shall present the adopted budget to the Members and a meeting of the Members. Owner may disapprove a proposed budget pursuant to the provisions of the Act. During the Control Period, Members may not disapprove a budget.

8.3 **Adjustments to Assessments.** In the event the Board reasonably determines that the estimate of total charges for the current year is, or will become, inadequate to meet Common Expenses for any reason, it may then revise the budget and Owner's share of the new budget total based on Owner's Allocated Interest. Upon reasonable notice of the adjustment and revised budget, and unless modified by the Board, Owner shall thereafter pay to the Association Owner's adjusted Assessment.

8.4 **Personal Obligation for Assessment.** Owner, by acceptance of a deed or other instrument creating ownership, 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 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 Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs, and attorney fees, shall also be the personal obligation of Owner at the time the Assessment becomes due.

8.5 Capital Improvements. Expenses for capital improvements may be included in the regular budget, paid for through Special Assessments, paid for through loan proceeds, or paid for in any other manner as determined by the Board of Directors.

8.6 Regular Assessments. Regular Assessments shall be paid by the Lot. The Regular Assessment shall be computed by taking the total Common Expenses of the Association and then allocating this figure to the Lot based on its Allocated Interest. Regular Assessments for the Lot after the construction of a Building has been completed shall be fixed at a uniform rate based on the Lot's Allocated Interest.

8.7 Special Assessments. The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Regular Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Area; or for any other expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to Owner. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Control Period without Owner approval, but after providing at least thirty (30) days advance notice. Special Assessments shall be allocated based on the Lot's Allocated Interest.

8.8 Individual Assessments. Individual Assessments may be levied by the Association against the Lot and Owner for: (a) costs of providing services to the Lot upon request of Owner; (b) costs incurred in bringing Owner or the Lot or Building into compliance with the provisions of the Governing Documents; (c) fines, late fees, collection charges, interest, and all other costs incurred in enforcing the Governing Documents against Owner or his Occupants; (d) costs associated with the maintenance, repair, or replacement of the Common Area caused by the neglect or actions of Owner or its Occupants; (e) any other charge designated as pertaining to an individual Lot in the Governing Documents; and (f) attorney fees, costs, and other expenses relating to any of the above, regardless of whether a lawsuit is filed. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot benefited, unless such work was necessitated by Owner's or his/her Occupants' negligence.

8.9 Intentionally Omitted.

8.10 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 Owner or an error in any such statement shall not relieve Owner of liability for any Assessment or charge under the Governing Documents.

8.11 **Statement of Unpaid Assessment.** Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to Owner's account. For any valid request, and upon payment of a fee of not more than twenty-five dollars (\$25.00), the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.

8.12 **Account Payoff Fee.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of the Lot as provided for in Utah Code §57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between Owner and purchaser may be obtained from the Association but may incur additional fees.

8.13 **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 the Lot, and which can be accepted or not by Owner, Owner, in accepting such materials or services, agree that the costs thereof may be a Special Assessment pertaining to the Lot, at the discretion of the Board of Directors.

8.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may 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 Owner in proportion to the Allocated Interests of the Lot, or take other action with the funds permitted under this Declaration, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

8.15 **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 Owner 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 Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

8.16 **How Payments Are Applied.** Unless otherwise provided for in the Rules or Board resolution, all payments for Assessments shall be applied to the earliest (or oldest) charges first. Owner shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

ARTICLE IX – NONPAYMENT OF ASSESSMENTS & LIABILITY

9.1 **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 or in the Act.

9.2 Collection Charges and Interest. Assessments shall be due and payable on dates and times established by the Board. Regular Assessments may be paid on a monthly, quarterly, annual, or other basis determined by the Board. Assessments not received within ten (10) days of when they were first due shall be considered delinquent. Delinquent Assessments are subject to a late fee in an amount determined by the Board. In addition to late fees, interest may accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at eighteen percent (18%) per annum. The Association may also assess to Owner a collection charge, late fee, and any other reasonable fee charged by a Manager related to collections.

9.3 Joint & Several Liability of Owners. Owner is personally liable for all Assessments accruing during their time of ownership of the Lot. Owner is also liable for all Assessments accruing related to that Lot prior to their time of ownership of the Lot, including interest, late fees, costs, and attorney fees. 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 section is separate and distinct from any lien rights associated with the Lot.

9.4 Lien. The Association has a lien on the 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 collection costs and shall not be limited by those costs that may be awarded by a court under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on the Lot for all fines imposed against 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 Owner did not file an appeal; or (2) 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 the Lot except: (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 the Lot.

9.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against 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 Lot, and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against Owner for the collection of delinquent Assessments.

9.6 Foreclosure. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302,

Owner's acceptance of an interest in the Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

9.7 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to vote, (2) access to the Common Area in the Project, and (3) rights to receive a utility or other service paid for as a Common Expense.

9.8 Attorney Fees. 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 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 Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessarily related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien or related documents. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

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

ARTICLE X – PROPERTY RIGHTS IN THE LOT & COMMON AREA

10.1 General Easements.

(a) Subject to all other terms of the Governing Documents, Owner shall have the right and a nonexclusive easement for use and enjoyment of the Common Area and related facilities, subject to any other restrictions related to such use. Such right and nonexclusive easement shall be appurtenant to and shall pass with title to the Lot and in no event shall such appurtenant rights be separated therefrom. Owner may extend her right of use and enjoyment to her Occupants, lessees, and invitees, as applicable under the Governing Documents. All such rights shall be subject to any Rules established by the Board of Directors.

(b) The Association (and Declarant during the Control Period) shall have nonexclusive easements with the right of access over and across the Lot, to (i) make inspections, to prevent or mitigate damage to the Common Area, (ii) to maintain, repair, replace, or effectuate the restoration of the Common Area that the Association is responsible for maintaining which are accessible from the Lot, and (iii) to carry out its duties and obligations under the Governing Documents, including the enforcement thereof. 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 for purposes necessary for the proper operation of the Project.

10.2 Public Utilities. Easements and rights-of-way throughout 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, Lot, or Owner 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 the Lot by Owner or Occupants. The Association shall have the power to grant and convey, in the name of the Association or Owner as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area or Lot 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. Owner in accepting the deed to the Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Owner and those claiming by, through, or under Owner agrees 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 Owner of the Lot, or materially or adversely affect the use or operation of the Buildings on the Lot.

10.3 Intentionally Omitted.

10.4 Easements Reserved by Declarant. The Declarant hereby reserves to itself and its assigns the following easements:

(a) The right to install, inspect, maintain, repair, and replace any utilities and infrastructure to serve the Project, including without limitation electricity, water, sewer, phone, communications cables, and storm water drainage systems for the Project and land that becomes part of the Project.

(b) Intentionally omitted.

(c) The right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any property within the Project, including Buildings and a perpetual non-exclusive easement of access throughout the Project reasonably necessary to exercise such right.

(d) The right to construct, operate, maintain, repair and replace storm detention and water quality structures in the Project to adequately control surface water.

(e) Intentionally omitted.

(f) Declarant may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Project to such third parties as it may designate from time to time.

No easement may be granted, pursuant to this Section, if it would materially and adversely interfere with the use or occupancy by Owner of the Lot or materially or adversely affect the use or operation of the Buildings on the Lot.

10.5 Easements for Encroachments. If any portion of the Common Area or any common improvement encroaches upon the Lot, or if any structure or fixture encroaches unintentionally upon the Common Area as a result of the manner in which 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. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

10.6 Public Access. Certain facilities and areas within the Project may be open for use and enjoyment of the public. Such facilities and areas may include, but are not limited to, roads, sidewalks, parking lots, and medians. Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall retain all rights to adopt and enforce Rules and regulations for any portion of the Common Area that may be open to the public.

10.7 Limitation on Easement. Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:

(a) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access, and to have rights of ingress and egress over and across any street, parking areas, walkway, or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

(b) The right of the Association to dedicate or transfer any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Declarant during the Control Period, or afterwards by the Association; provided that such dedication or transfer following the Control Period must first be approved by the affirmative vote or written consent of Owner.

ARTICLE XI – USE LIMITATIONS & CONDITIONS

11.1 Lot Signage. Any signs placed upon the Lot shall be done in conformity with applicable municipal ordinances and shall comply with West Jordan City requests or demands. For purposes of clarity, Declarant has previously approved the proposed sign package for the Lot.

11.2 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 Owner or the Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of

any insurance or decrease the value of any Buildings. 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 and the Board shall have the authority and discretion to determine whether a particular activity is a nuisance. Any violation of the Governing Documents shall be deemed a nuisance.

11.3 **Intentionally Omitted.**

11.4 **Intentionally Omitted.**

11.5 **Lighting.** The Board may adopt Rules setting forth exterior lighting standards and regulation along the Common Area.

11.6 **Variations.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion: (i) that the restriction would create an unreasonable hardship or burden on Owner or an Occupant, (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce, or (iii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Occupants of the Project and is consistent with the high quality nature of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by the Board.

ARTICLE XII – INSURANCE

NOTICE: The Association’s Insurance Policy does not cover the real or personal property or personal liability of Owner or its guests and Occupants.

12.1 **Insurance Requirement.** The Association shall obtain or cause Owner to 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. Association insurance premiums shall be a Common Expense.

12.2 **Common Area Property Insurance.** To the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Association’s obligation to maintain, the Association may maintain or may cause Owner to maintain a policy of property insurance covering the Common Area, including all structures and improvements, building service equipment, and fixtures thereon.

(a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to or otherwise permanently part of or affixed to Common Area, 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.

Owner may choose to self-insure instead of obtaining property insurance pursuant to this Section.

12.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain or shall cause Owner to obtain CGL insurance insuring the Association, the agents and employees of the Association, and Owner, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Owner's 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 Owner because of the negligent acts of the Association.

12.4 Directors' and Officers' Insurance. To the extent required by law, the Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy may include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, and (7) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

12.5 Theft and Embezzlement Insurance. The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

12.6 Workers' Compensation Insurance. 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 or as the Board deems appropriate.

12.7 Other Insurance. The Association may purchase or cause Owner to purchase earthquake, flood, or other types of insurance that may benefit the Project, as the Board deems appropriate.

12.8 Right to Negotiate All Claims & Losses & Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy, if any, shall be payable to the Association and shall not be payable to a holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Owner, 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, any remaining proceeds shall be paid to the Association. If proceeds remain after necessary action are taken to repair the property, then such proceeds may either be distributed to Owner and any lien holders, as their interests remain with regard to the Lot, or kept as credits to Owner's account. Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to

administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of Owner.

12.9 **Certificates.** Any insurer that has issued an insurance policy to the Association or to Owner shall issue a certificate of insurance to the Association and, upon written request, to Owner or any Lender.

12.10 **Named Insured.** The named insured under any policy of insurance shall be the Association. The Declarant shall be listed as an additional insured on all of the Association's insurance policies during the Control Period. Owner shall also be a named insured under the Association's insurance policies.

12.11 **Waiver of Subrogation Against Owner & Association.** All property and commercial general liability policies must contain a waiver of subrogation by the insurer as to any claims against the Association, Declarant, Owner, and the Association's agents and employees.

12.12 **Right of Action.** Nothing in this Declaration shall prevent Owner when 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.

12.13 **Owner Insurance.** It is the responsibility of Owner to insure the Lot and all improvements thereupon, including the Building. Owner may purchase and maintain in force appropriate hazard, content, property, and liability insurance as Owner shall determine to be appropriate to Owner's needs, circumstances, and Building type. The Association is not required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under Owner's insurance policy. Notwithstanding the foregoing, Owner may choose to self-insure the Lot, and improvements thereupon, including the Building.

ARTICLE XIII – DESTRUCTION OF IMPROVEMENTS

13.1 **Reconstruction.** In the event of partial or total destruction of any Common Area within the Project not covered by CRCP Agreement, the Board shall contract or request Owner to 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. All repair and restoration work shall be completed as promptly as practical, and in a lawful and workmanlike manner. In doing so, the Board shall determine and liquidate the amount of insurance proceeds, if any. All costs of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

13.2 **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 Common Area structure or improvement, 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 Owner and all Lenders.

13.3 **Repair of the Lot.** Installation of improvements to, and repair of any damage to those Buildings, structures, improvements, facilities and elements of the Lot shall be made by and at the individual expense of Owner and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable, and in a lawful and workmanlike manner.

13.4 **Priority.** Nothing contained in this Article shall entitle Owner to priority over any Lender under a lien encumbering the Lot as to any portion of insurance proceeds allocated to the Lot.

ARTICLE XIV – AMENDMENTS

14.1 **Amendments by Declarant.** So long as the Declarant owns the Lot, the Declaration and the Plat may be amended or supplemented solely by the Declarant with the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns the Lot. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety. Notwithstanding the foregoing, any amendment made by Declarant under this Section may not materially and adversely affect any Buildings located on or the business conducted on the Lot.

14.2 **Amendments by Association.** After the Lot has been sold to a third party, this Declaration and the Plat may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If the Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for the Lot under this Section. If the Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for the Lot under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing and anything contrary in this Declaration, the Members' authority to amend Articles XV and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XV and XVI shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

14.3 **Necessary Amendments.** Declarant or the Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, state, or federal governmental agency; or (c) to correct any scrivener's error. However, any such amendment occurring after the Control Period shall not adversely affect the title to the Lot unless Owner shall consent in writing.

ARTICLE XV – SPECIAL DECLARANT RIGHTS

15.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (a) Any Improvements shown on the Plat;

- (b) Intentionally omitted; and
- (c) Any other buildings, structures, or improvements that Declarant desires to construct on the Project, or any other real estate owned by Declarant, regardless of whether the same ever becomes part of the Project.

No improvements may materially or adversely affect the use or operation of the Buildings on the Lot. Declarant may not exercise the rights granted pursuant to this Section while under contract to sell the Lot to a third party.

15.2 Intentionally Omitted.

15.3 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and such rights arise separate from, and in addition to any rights that arise from being the Owner. The Special Declarant Rights shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law, which may exceed the termination of the Control Period:

- (a) intentionally omitted;
- (b) the right to use easements throughout the Common Area provided that the exercise of such right does not adversely affect the use of the Common Area by Owner;
- (c) the right to dedicate any roads owned by the Association within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;
- (d) intentionally omitted;
- (e) intentionally omitted;
- (f) the exclusive right to act as the Board of Directors, or appoint or remove Board members during the Control Period;
- (g) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (h) the right to set all Assessments for the Association including Regular, Special, and Individual Assessments as set forth in this Declaration or the Act;
- (i) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules as set forth in this Declaration or the Act;
- (j) intentionally omitted;
- (k) the exclusive right to amend the Declaration, Bylaws, Plat and Rules of the Association without approval from any Members (except that such rights shall not be exercised in a manner that adversely and materially affects the ownership rights, operation, and use of the Lot);
- (l) intentionally omitted;
- (m) the right to cast all required votes on behalf of Owner for the approval of a transfer or conversion of the Common Area as may be required by Utah State law;
- (n) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration (except that such rights shall not be exercised in a manner that adversely and materially affects the ownership rights, operation, and use of the Lot);

(o) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217, or as otherwise set forth in this Declaration; and

(p) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Control Period, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Control Period.

15.4 Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the expiration of the Control Period or the term Declarant owns the Lot, whichever period of time is longer. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or Owner so long as Declarant is not under contract to sell the Lot to a third party.

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

15.6 Limitation on Improvements by Association. Until the expiration of the Control Period, neither the Association nor the Board shall, without the written consent of Declarant, make any Improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally constructed or created by Declarant.

15.7 Transfer of Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part through a written agreement. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant after such assignment shall apply solely to its successor or designated assignee. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the County Recorder. Declarant may not exercise its rights pursuant to this paragraph while under contract to sell the Lot to a third party except in connection with the sale of the Lot to such third party.

15.8 Changes by Declarant. Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of the Lot prior to the contracting for the conveyance of the Lot to a purchaser.

15.9 Voting. During the Control Period, any matter voted upon by Owner shall not become effective unless the matter is approved in writing by the Declarant.

15.10 Easements Reserved to Declarant.

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as Common Area on the Project.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lot therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to the Lot, or in the area or on the area in which the same is located. However, no easement can be granted pursuant to this subsection if it would materially interfere with the use or occupancy of Owner of the Lot.

(c) Easement granting the privilege of entering upon the Common Area for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the storage of building supplies and materials, parking of construction vehicles, erection of temporary structures, trailers, improvements or signs necessary or convenient to the development of the Project, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(e) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across the Lot except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

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

15.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered without the written consent of the Declarant until at least six (6) years have passed after the Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

ARTICLE XVI – DISPUTE RESOLUTION

16.1. Alternative Dispute Resolution Without Litigation

(a) **Bound Parties.** The Declarant; the Association; Owner; and the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound

Parties”), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lot. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim defined in subsections (b) and (c), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this Article, the term “Claim” means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association, which shall not be subject to review and shall not be subject to this Article.

(c) Exclusion from Definition of Claims. The following shall not be considered “Claims” unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

(i) any suit by the Association to collect assessments or other amounts due from Owner;

(ii) intentionally omitted;

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 16.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim’s statute of limitations to comply with this Article;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project;

(vii) any suit by Owner involving slander of title or the filing of a wrongful lien against Owner; and

(viii) any suit or dispute involving a governmental entity as a party.

16.2. **Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy;
- (iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and
- (v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify alter or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 16.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) Negotiation. The Claimant and Respondent shall act in good faith and make every reasonable effort to meet in person, including in any meeting with agents having authority to bind the Bound Party, and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

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

16.3. Initiation of Litigation by Association. The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8a-229 of the Act. After expiration of the Control Period the Association may not bring a legal action against the Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Control Period unless:

(a) The Right to Cure period set forth in Section 16.2(b) above has expired;

(b) the legal action is approved in advance at a meeting by Owner holding at least 51% of the total Allocated Interests of the Association:

(i) Owner may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with Owner certifying that they have received and reviewed the information required by Section 16.4(a) and (b) below.

(c) the Association provides Owner with the items described in Section 16.4(a) and (b), below;

(d) the Association establishes a trust account, described in Section 16.4© below; and

(e) the Association first goes through the procedures described in Section 16.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.

(f) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:

(i) initiated by Declarant during the Control Period on behalf of the Association;

(ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Control Period. Any such amendment shall also be approved by a vote of 67% of the Allocated Interests of the Association.

16.4. **Informed Vote.** Before Owner, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide Owner with:

(a) A written notice stating:

- (i) that the Association is contemplating legal action;
- (ii) the percentage vote required for approval of the litigation;
- (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
- (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

(b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:

- (i) The likelihood that the legal action will succeed;
- (ii) The likely amount in controversy in the legal action;
- (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
- (iv) The likely effect the stigma of a legal action will have on value or on Owner's ability to market for sale, or a prospective Lot buyer's ability to obtain financing for the Lot due to a pending legal action.

(v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

(c) Before the Association commences any legal action as authorized above, the Association shall:

- (i) allocate an amount equal to 25% of the cost estimated to resolve the Claim not including attorney fees; and
- (ii) place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 16.3 and 16.4 do not apply if the Association brings a legal action that has an amount in controversy of less than \$25,000.00.

16.5 **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound

Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

16.6 Owner Warranties. The Declarant may provide certain warranties to Owner related to the Lot when purchased. The first Owner of the Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

16.7 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Area.

16.8 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

16.9 The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Control Period.

ARTICLE XVII - INTERPRETATION, CONSTRUCTION, & APPLICATION

17.1 No Waiver. Failure or delay by the Association or by 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. No failure to demand strict adherence to the Terms and Conditions shall be deemed to constitute a course of conduct inconsistent with the Association's right to demand strict adherence to the Terms and Conditions of this Declaration.

17.2 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.

17.3 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.

17.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and Owner in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and Owner 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.

17.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions contained herein by judgment or court order shall in no way affect any other Terms and Conditions or provisions of this Declaration, all of which shall remain in full force and effect.

17.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a commercial PUD 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 Declarant, the Association, Owner, or any other Person subject to their terms.

17.7 **Applicable Law.** The Association is specifically made subject to the Act and Utah law. 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.

17.8 **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.

17.9 **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 Declarant, Association, and Board shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

ARTICLE XVIII - GENERAL PROVISIONS

18.1 **Enforcement.** The Declarant, the Association, or 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.

18.2 **Interpretation of the Covenants.** Except for judicial construction, the Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and provisions hereof.

18.3 **Attorney Fees.** If the Association utilizes legal counsel to enforce any Term and Condition, or after Owner communicates or demonstrates an intent not to comply with a Term and Condition, the Association may assess all reasonable attorney fees and costs associated

with such enforcement to Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. 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.

18.4 Notices. Any notice required or permitted to be given to Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot shall be used for notice purposes. The use of the terms "notice" or "written notice" in this Declaration or other Governing Document shall include notices sent via email, text, facsimile, or other electronic communication; or notices printed on paper and sent by hand-delivery, regular mail, or any notice otherwise physically received by Owner.

Unless Owner notifies the Association in writing that they desire to receive notices via USPS mail, Owner shall provide to the Board, or the Association's Manager, an email address that the Association may use to affect notice as described herein. Any notice sent via email shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to Owner, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

18.5 Consent in Lieu of Voting. In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents or ballots in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method for obtaining consents or ballots not disallowed under Utah law or may use any procedure permitted under the Utah Revised Nonprofit Corporation Act.

18.6 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Owner, 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 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).

18.7 Owner Liability and Indemnification. Owner shall be liable to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of Owner, or any intentional or negligent act of any Occupant of that Owner's Building, to the extent such losses and damages are either under the deductible of the Association or not covered by the Association's insurance. Owner, by acceptance of a deed to the Lot, agrees personally to defend, indemnify, and hold harmless any Occupant against, any claim of any Person for personal injury or property damage occurring within the Building of Owner, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association or the Person bringing the claim.

18.8 Consent, Power of Attorney, and Waiver. By acceptance of a deed, lease, or other conveyance of an interest in the Lot, Owner or any 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 Owner or any 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 Owner or such Occupant to execute such documents and to do such things on Owner's or such Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of Owner or any such Occupant.

18.9 Intentionally Omitted.

18.10 Dissolution. The Association may be dissolved by the affirmative assent in writing of Owner holding at least ninety percent (90%) of the Allocated Interest of the Association. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in this Declaration.

18.11 Security. The Declarant and the Association shall in no way be considered an insurer or guarantor of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage to Owner or its personal property for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. By purchasing the Lot, Owner and Occupants agree that the Association and the Declarant are not insurers of the safety or well-being of Owner or Occupants or of their personal property, and that Owner or any Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property, to the extent any such damages are not covered by insurance. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE TO THE LOT THAT THE ASSOCIATION AND THE DECLARANT 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 SECURITY OF THE PROJECT.

18.12 Mortgage Protection Clause. Notwithstanding the foregoing and anything to the contrary in the Governing Documents, any and all provisions of this Declaration, the Articles, or the Bylaws to the contrary (and to the extent the provisions of this Article 18.12, conflict with other provisions of this Declaration, the Articles, or the Bylaws, this Article 18.12 shall control):

(a) Each Lender, following the written request of the Lender, is entitled to written notification from the Association of any of the following:

(i) default by the mortgagor of the Lot (Mortgagor") in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the Bylaws, which default is not cured within sixty (60) days;

(ii) any condemnation loss or any casualty loss which affects a material portion of the Project or the Lot;

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

(b) Each Lender, together with such mortgagee's successors and assigns (including a purchaser of the Lot from or through a mortgagee), which obtains title to the Lot pursuant to the remedies provided in such mortgage, or by foreclosure of such mortgage, or by deed in lieu of foreclosure shall take title to the Lot free and clear and shall not be liable for any claims of unpaid Assessments or charges against the Lot which accrued prior to the acquisition of title to the Lot by the Lender.

(c) All Lenders, following the written request of the Lender, shall be promptly notified following any damage to the Common Area whenever the cost of reconstruction exceeds Fifty Thousand Dollars (\$50,000.00), but only if such reconstruction costs is not covered by insurance.

(d) Lenders may, jointly or singly, pay taxes or other charges which are in default, and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property. The Lenders making such payments shall be reimbursed by the Association. The Association shall, upon request of any Lender, issue an agreement to make reimbursement in full to the Lender.

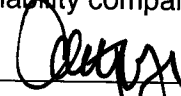
(e) Neither this Article nor other provisions regarding the subordination of Assessments in favor of Lenders can be amended without the affirmative vote or written consent of not less than sixty-seven percent (67%) of all Lenders.

18.13 Effective Date. This Declaration and any amendment hereto, shall take effect upon its filing in the office of the Salt Lake County Recorder.

* * * *

IN WITNESS WHEREOF, the undersigned has executed and adopted this Declaration as of this 31 day of August, 2022.

DECLARANT
CW COPPER RIM 1, LLC
a Utah limited liability company

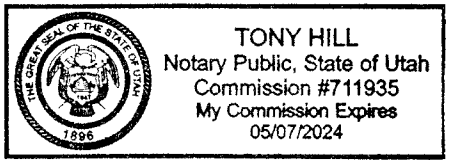
By: 

Name: COLIN WRIGHT

Its: AUTHORIZED REPRESENTATIVE

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the 31 day of August, 2022, personally appeared before me
COLIN WRIGHT, who by me being duly sworn, did say that she/he is
an authorized representative of CW Copper Rim 1, LLC, and that the foregoing instrument is
signed on behalf of said company and executed with all necessary authority.




Notary Public: 

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND SITUATE IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MOUNTAIN VIEW CORRIDOR HIGHWAY, SAID POINT BEING NORTH 89°58'35" EAST 217.02 FEET ALONG THE SECTION LINE AND NORTH 0°01'25" WEST 84.35 FEET, AND NORTH 20°15'47" WEST 16.12 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE ALONG THE EAST RIGHT OF WAY LINE OF SAID MOUNTAIN VIEW CORRIDOR HIGHWAY THE FOLLOWING TWO (2) COURSES: (1) NORTH 20°15'47" WEST 208.21 FEET TO A POINT OF CURVATURE ON A 1,108.00 FOOT RADIUS CURVE TO THE LEFT; (2) NORTHERLY 155.58 FEET ALONG THE ARC OF SAID CURVE, CHORD BEARS NORTH 24°17'06" WEST 155.45 FEET; THENCE NORTH 41°22'36" EAST 306.77 FEET; THENCE SOUTH 48°17'26" EAST 366.85 FEET TO A POINT OF CURVATURE ON A 142.00 FOOT RADIUS CURVE TO THE LEFT; THENCE EASTERLY 91.57 FEET ALONG THE ARC OF SAID CURVE, CHORD BEARS SOUTH 66°45'54" EAST 89.99 FEET; THENCE SOUTH 0°02'45" EAST 287.48 FEET; THENCE SOUTH 89°58'48" WEST 423.52 FEET TO THE POINT OF BEGINNING

CONTAINS 214,066 SQUARE FEET, OR 4.914 ACRES

EXHIBIT B

ALLOCATED INTERESTS FOR THE LOT

| <u>LOT</u> | LOT SQUARE FOOTAGE | <u>ALLOCATED INTEREST</u> |
|------------|--------------------|---------------------------|
| LOT 2 | 22,194 sq. ft. | 100% |
| Totals: | 22,194 sq. ft | 100% |

EXHIBIT C
BYLAWS
OF
COPPER RIM FURNITURE ROW ASSOCIATION, INC.

These BYLAWS OF COPPER RIM FURNITURE ROW ASSOCIATION, INC. are effective upon recording in the Salt Lake County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles.

B. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and Owner, to provide for the ability to effectively govern and operate the Association and the commercial planned development Project known as Copper Rim Furniture Row and, to further the Association's efforts to safely, efficiently, and economically provide a quality commercial planned development.

ARTICLE I
DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Covenants, Conditions and Restrictions for Copper Rim Furniture Row Association, Inc.

ARTICLE II
APPLICATION

2.1 All present and future Owners, Lenders, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Buildings or the mere act of occupancy or use of any said Buildings or the Common Area will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III
OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a

review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Control Period, but the Declarant may hold Annual Meetings at its discretion.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owner holding not less than forty percent (40%) of the Allocated Interests of the Association. Any written request for a Special Meeting presented by Owner shall be delivered to the President and shall include the original signature of Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within forty-five (45) days of receipt of a valid Owner request. During the Control Period, Special Meetings may only be called by the Declarant.

3.3 **Place of Meetings.** The Board may designate any place that is reasonably convenient for Owner as the place of meeting for any Annual or Special Meeting. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owner to communicate orally in real time including telephone and video conferencing.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and location (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to Owner's address registered with the Association. Owner shall register with the Association Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, Owner's Building shall be deemed to be Owner's registered address and notice to the Building address may be made by first-class mail or by posting the meeting notice on the front door. Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that Owner will not accept notices by way of email or text.

3.5 **Qualified Voters.** Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her Assessment account (together with interest or other fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of the Lot in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum.** Any number of Owners present in person or by proxy at a meeting of the Association that is called and held in compliance with the requirements of the Bylaws, shall constitute a quorum for the adoption of decisions. The vote of Owner representing a majority of the Allocated Interest of the Owners in attendance in person or by proxy, shall decide any question or action brought before the meeting. Notwithstanding the foregoing, if the Acts, the Articles, the Declaration (as amended), or these Bylaws require a fixed percentage of Owner's Allocated Interests to approve any specific action (*e.g.*, amending Governing Documents), that percentage shall be required to approve such action.

3.8 **Proxies.** At each Owner meeting, Owner 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 signed by Owner or by Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If the Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of the Lot or the Owner's attorney when duly authorized in writing. A proxy given by Owner to any person who represents Owner at meetings of the Association shall be in writing, dated, and signed by Owner. 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. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** Owner shall be entitled to vote on each matter submitted to Owner vote in person or by proxy, or by any type of written or electronic ballot. Owner votes shall be equivalent to the Allocated Interest of the Lot of Owner. The Declarant shall be entitled to a vote equal to fifty (50) times the Allocated Interest assigned to any Lot the Declarant owns in the Project. The affirmative vote of a majority of the votes entitled to be cast by the Declarant and Owner present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owner, unless a greater proportion is required by these Bylaws, the Declaration, or the Acts. When more than one (1) Owner holds an interest in the Lot, any Owner may exercise the vote for the Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised with respect to the Lot. Only those Owners whose accounts with the Association are not delinquent and paid in full at least forty-eight (48) hours prior to the start of the meeting shall be entitled to vote.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of

meetings, in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decisions and/or votes of the Board or of Owner shall be deemed waived if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting or date of the action.

3.11 **Action Taken Without a Meeting.** Owner shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owner through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary or the Manager shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to Owner within sixty (60) days of the annual meeting upon request.

ARTICLE IV BOARD OF DIRECTORS

4.1 **Powers.** The Project and the business and affairs of the Association shall be governed and managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in Owner.

4.2 **Number and Qualifications.** The Board of Directors shall be composed of three (3) Persons. Board Members must be at least 18 years old, and the majority of the Board of Directors must be an Owner or the spouse of an Owner of the Lot in the Project. If Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Control Period, the Director qualification requirements of these Bylaws shall not apply, and the Declarant shall act as the Board and may exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Control Period, Board Members shall be appointed by Declarant. Following the Control Period, the election of Board Members shall be made by Owner. At such election, Owner or its proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members

unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Control Period, Board Member terms shall be determined exclusively by Declarant. Following the Control Period, the terms of the Board Members shall be three (3) years. The terms of Board Members shall be staggered and overlap so that elections for Board Member positions are held each year. Board Members may serve consecutive terms if elected. At the first election following the Control Period, the Person(s) receiving the highest number of votes shall serve three (3) year terms, the Person(s) receiving the next highest vote total shall serve two (2) year terms, and the Person receiving the lowest vote total shall serve a one (1) year term.

4.5 **Regular Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Control Period, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member and Owner.

4.7 **Meeting Notice.** Notice of Board Meeting date, time, and location shall be delivered personally, by email, by text, or by telephone, to all Board members and Owner at least two days in advance of the meeting. Any Director may waive notice of a meeting. By unanimous consent of the Board, special meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owner.

4.8 **Owner Attendance.** Owner may request notice of Board meetings by requesting such notice from a Board member and providing a valid email address at which Owner will receive notice. Owner shall be given notice along with the Board members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owner attends a Board meeting, the Board may select a specific time period during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that Owner may speak.

4.9 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any Board meeting. 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, shall be the act of the Board. Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.10 **Open Meetings.** Except as provided in (a) through (f) below, following the Control Period, Board meetings shall be open to Owner. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or administrative proceeding;

- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Control Period, Board meetings may be closed to Owner, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to Owner. Notwithstanding the foregoing, the Board meetings required under Utah Code § 57-8a-226(7)(b) shall be open to Owner.

4.11 **Board Meetings Generally.** The Board may designate any place reasonably accessible to the Board as the meeting place for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone, video conferencing, or any other electronic means that allows for Board Members to communicate orally in real time. Following the Control Period, if a Board meeting is held by video conference or by telephone, the Association shall provide the access or call-in information such that Owner may call-in to access the meeting.

4.12 **Board Action.** Notwithstanding noncompliance with any provision within these Bylaws, Board action is binding and valid unless set aside by a court of law. A Person challenging the validity of a Board action for failure to comply with these Bylaws, the Governing Documents, or any other irregularity may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Board Members appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by Owner after the Control Period may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the Allocated Interests of the Association. At such a meeting, Owner shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies.** If vacancies occur during the Control Period, the Declarant shall appoint a Board Member to fill the vacancy. Following the Control Period, if vacancies occur for any reason (including death, resignation, or disqualification) except removal by Owner, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. A vacancy in the Board occurring by reason of removal of a Board Member by Owner may be filled by election of Owner at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a Board meeting if a majority of the Board Members consent to the action in writing. The term "in writing" shall specifically include email and text messaging. Board Members may also take action without a meeting if the Board complies with any applicable provisions of the Acts. Any action so approved shall have the same effect as though taken at a Board meeting. Any actions taken without a meeting may be documented in subsequent Board meeting minutes.

4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment.** The Board may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall have the rights and powers set forth in this Article, or as otherwise designated by the Board. Officers shall not be required during the Control Period.

5.2 **Election, Tenure, and Qualifications.** Officers shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board may 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 determine.

5.4 **Resignation and Removal.** Officers may resign at any time by delivering a written resignation to any Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies.** If a vacancy occurs in an office for any reason, or if a new office is created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the 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 Owner or person, (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." 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.

5.7 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the President in the event of the President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager.

5.8 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts 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 Board meeting. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

5.9 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A 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 committee at any time.

6.2 **Proceeding of Committees.** A committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such

committee may from time to time determine. Each committee shall keep a record of its proceedings and shall regularly report such records to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer 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 committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted to it by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to a Board Member, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove a committee member.

6.5 **Vacancies.** If a vacancy occurs in a committee for any reason, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby agree to defend, indemnify, and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, 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, or committee member of the Association 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 committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided 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 willful or 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 defend, indemnify, or reimburse such person, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The defense and indemnification herein provided shall not be deemed exclusive of any other right to defense and indemnification to which any person seeking indemnification may be entitled to under the Acts or under any 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. It is the intent hereof that all Board Members, officers, and committee members be and hereby are defended and indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The defense and indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to defend and indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any person to be defended and indemnified shall be subject always to the right of the Association through the Board, 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 VIII RULES AND REGULATIONS

8.1 **Rules.** The Board shall have the authority to adopt Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by Owner and all Occupants. Owner is responsible to ensure that its lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to Owner at least ten (10) days prior to the effective date thereof.

ARTICLE IX AMENDMENTS

9.1 **Amendments by Declarant.** So long as the Declarant owns the Lot, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarants unilateral amendment right as designated herein may continue past the expiration of the Control Period. No other amendment shall be valid or enforceable during the period Declarant owns the Lot unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns the Lot shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Salt Lake County Recorder.

9.2 **Amendments by Association.** After the Declarant has sold the Lot to unaffiliated third parties, and the Control Period has expired, the Bylaws may be amended by Owner upon the affirmative vote of more than sixty-seven percent (67%) of the Allocated Interest of the Association. Any amendment(s) shall be effective upon recordation in the office

of the Salt Lake County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If the Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for the Lot under this Section. If the Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for the Lot under this Section. No acknowledgment of Owner's signature shall be required. No amendment shall in any way restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of a failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

* * * *

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association this 31 day of August, 2022.

DECLARANT
CW COPPER RIM 1, LLC
a Utah limited liability company

By: _____

Name: COLIN WRIGHT

Its: AUTHORIZED REPRESENTATIVE

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the 31 day of August, 2022, personally appeared before me
COLIN WRIGHT, who by me being duly sworn, did say that she/he is
an authorized representative of CW Copper Rim 1, LLC, and that the foregoing instrument is
signed on behalf of said company and executed with all necessary authority.

Notary Public: _____

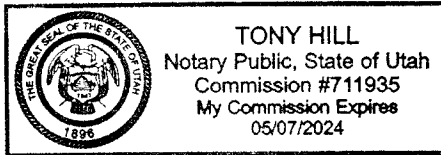


EXHIBIT E

CRCP AGREEMENT

JOINT USE, MAINTENANCE, AND COST SHARING AGREEMENT

This JOINT USE, MAINTENANCE, AND COST SHARING AGREEMENT (“**Agreement**”), dated effective as of August ____, 2022 (the “**Effective Date**”), is entered into by and between COPPER RIM COMMERCIAL PARK ASSOCIATION, INC. (the “**Commercial HOA**”), a Utah nonprofit corporation, and COPPER RIM FURNITURE ROW ASSOCIATION, INC. (the “**Furniture HOA**”), a Utah nonprofit corporation, for good and valuable consideration, receipt of which is hereby acknowledged. The Commercial HOA and the Furniture HOA may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

- A. The Commercial HOA was or will be made subject to the Declaration of Covenants, Conditions, and Restrictions for Copper Rim Commercial Park, as recorded with the Recorder’s Office on _____, 2022 as Entry No. _____, as amended (the “**Commercial HOA Declaration**”).
- B. The Commercial HOA Declaration pertains to and affects that certain real property located in West Jordan City, Salt Lake County, Utah, which is part of the Copper Rim Commercial Park, and subject to the plat titled _____, as recorded in the Recorder’s Office on _____, 2022 as Entry No. _____ (the “**Commercial HOA Property**”). The Parties acknowledge and agree that the Furniture HOA Property (as defined below) is not a part of and is not subject to the Commercial HOA Declaration.
- C. The Furniture HOA was or will be made subject to the Declaration of Covenants, Conditions, and Restrictions for Copper Rim Furniture Row as recorded in the Recorder’s Office on ____, 2022 as Entry No. ____, as amended (the “**Furniture HOA Declaration**”).
- D. The Furniture HOA Declaration pertains to and affects that certain real property located in West Jordan City, Salt Lake County, Utah and is part of the Copper Rim Furniture Row commercial development, and is subject to those portions of the plat relating to Lot 2 titled ____, as recorded in the Recorder’s Office on ____, 2022 as Entry No. _____ (the “**Furniture HOA Property**”). The Parties acknowledge and agree that the Commercial HOA Property is not a part of and is not subject to the Furniture HOA Declaration.
- E. There are two (2) main roadways coming into the Commercial HOA Property that will provide

access to the Lots within the Commercial HOA Property and Furniture HOA Property for the benefit and enjoyment of both the Commercial HOA Benefited Parties and Furniture Benefited Parties. See Exhibit A illustration attached hereto and incorporated herein.

- F. The larger roadway that is accessed from Copper Rim Drive is the “**Primary Access Lane**”, which is made up of both the “**Access and Utility Easement Area**” and the “**FR Access Easement Area**” as shown on Exhibit A hereto.
- G. The second access roadway will be known as the “**Secondary Access Lane**” (referred to as the “**Secondary Access Easement Area**” on Exhibit A hereto).
- H. The FR Access Easement Area is located upon Lot 2 within the Furniture HOA Property.
- I. The Parties’ predecessors in interest executed and recorded the “**Reciprocal Access and Utility Easement Agreement**” with the Recorder’s Office on _____, 2022 as Entry No. _____, which establishes the easements rights concerning the Primary Access Lane and Secondary Access Lane (the “**Easement Agreement**”).
- J. The Parties desire to use the Primary Access Lane and Secondary Access Lane for ingress and egress purposes as set forth more specifically in the Easement Agreement.
- K. The Easement Agreement remains in full force and effect. This Agreement is intended to detail the maintenance obligations of the Primary Access Lane and Secondary Access Lane and the shared costs associated with such maintenance.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein and made part of this Agreement, and the mutual covenants of the Parties contained in this Agreement, the adequacy of which are hereby acknowledged, the Parties agree and are bound as follows:

1. **Definitions.** In addition to those terms defined elsewhere within this Agreement, as used in this Agreement, each of the following terms shall have the indicated meaning:
 - (a) “**Commercial Board**” means the Commercial HOA’s governing body.
 - (b) “**Commercial HOA Benefited Parties**” means any Owner or Occupant of a Commercial Lot, at any time, including such Owner or Occupant’s guests and invitees.
 - (c) “**Commercial Lot**” means a private lot within the Commercial HOA Property.
 - (d) “**Dispute Resolution Procedure**” means the procedure for resolving disputes between the Parties related to this Agreement set forth in Section 7 of this Agreement.

- (e) “**Easement Areas**” means collectively, the Primary Access Lane and the Secondary Access Lane as depicted on Exhibit A attached hereto and as more fully described on Exhibit B attached hereto, which are subject to the Easement Agreement.
- (f) “**Furniture Benefited Parties**” means any Owner or Occupant of a Furniture Lot, at any time, including such Owner or Occupant’s guests and invitees.
- (g) “**Furniture Board**” means the Furniture HOA’s governing body.
- (h) “**Furniture Lot**” means a private lot located within the Furniture HOA Property.
- (i) “**Occupant**” means any person who, at the time concerned, is an invitee of an Owner or pursuant to a lease, a rental agreement, a license or any other instrument, agreement contract, document, understanding or arrangement, is entitled to or does occupy, possess, or use any Furniture Lot or Commercial Lot.
- (j) “**Owner**” means the person(s) who, at the time concerned, is the legal owner of record (in the Recorder’s Office) of a whole or undivided fee interest in any portion of a Commercial Lot or a Furniture Lot.
- (k) “**Recorder’s Office**” means the Salt Lake County Recorder’s office.
- (l) “**Shared Easement Costs**” means costs and expenses associated with the maintenance (including snow removal), repair, replacement, management, and operation of the Primary Access Lane (not including the Secondary Access Lane), plus any amounts which the Parties may agree to set aside in a reserve account for future maintenance and repairs to the Primary Access Lane. Shared Easement Costs also include amounts charged by the manager or management company specifically related to the maintenance and operations of the Primary Access Lane as further provided in Section 3(e) herein.

2. Grant of Easement. The Parties represent and warrant that (i) Furniture Row (as defined in the Easement Agreement) has assigned the maintenance, upkeep, general repair, and replacement obligations for the FR Access Easement Area under the terms of the Easement Agreement to the Furniture HOA; and (ii) each of CW, West Bench and Yellowstone (each as defined in the Easement Agreement) has assigned the maintenance, upkeep, general repair, and replacement obligations for the Easement Area and the Additional Utility Infrastructure (as defined in the Easement Agreement) under the terms of the Easement Agreement to the Commercial HOA.

3. Easement Area Maintenance and Repair Obligations. Subject to the cost allocation, or sharing provisions contained in Section 4 of this Agreement, the Parties shall have the following maintenance and repair obligations related to the Easement Area.

- (a) **Primary Access Lane.** The Commercial HOA shall keep the Primary Access Lane in reasonably good condition, order, and repair.

- (b) Secondary Access Lane. The Commercial HOA shall keep the Secondary Access Lane in reasonably good condition, order, and repair at its own cost.
- (c) Landscaping. Furniture HOA shall be responsible to ensure that the landscaping running adjacent to the FR Access Easement Area within the Furniture HOA Property is kept in good condition, order, and repair. The Commercial HOA shall be responsible to ensure that the landscaping running adjacent to the Access and Utility Easement Area and the Secondary Access Easement Area within the Commercial HOA Property is kept in good condition, order, and repair.
- (d) Easement Area Contractors. The Commercial HOA shall select the contractors who will perform the maintenance (including snow removal), repair, and replacement obligations for the Easement Areas.
- (e) Manager. The manager or management company hired by the Commercial HOA shall be responsible for the management responsibilities for the Easement Areas. Any amounts charged by the manager or management company specifically related to the maintenance and operations of the Primary Access Lane shall be included in the Shared Easement Costs.

4. Allocation of Costs of Maintenance, Repair, and Operation of the Easement Areas. The Shared Easement Costs associated with and pertaining to the Access and Utility Easement Area portion of the Primary Access Lane shall be the responsibility of the Commercial HOA only. The Shared Easement Costs associated with and pertaining to the FR Access Easement Area portion of the Primary Access Road shall be the responsibility of the Furniture HOA only. To clarify the cost allocation, the Shared Easement Costs pertaining to the Primary Access Lane shall be allocated to each Party based upon their proportionate share of the total square footage of the Primary Access Lane as compared to the square footage of the Access and Utility Easement Area (Commercial HOA) and the FR Access Easement Area (Furniture HOA). For example, if the square footage of each area was equal, then each Party would be responsible for fifty percent (50%) of the Shared Easement Costs. For purposes of clarity, the Furniture HOA shall only contribute to any future reserve account or pay for any management fees that reasonably relate to the costs of that portion of the Primary Access Road located within the FR Access Easement Area. The Parties shall treat their respective portion of the Shared Easement Costs as common expenses under each Party's respective declaration of covenants, conditions, and restrictions and other governing documents. The Commercial Board shall track and reasonably determine the Shared Easement Costs to be paid by each Party pursuant to this Section.

- (a) Unless otherwise determined by the Commercial Board, the date to exchange this information shall be February 1st for payments of the respective Shared Easement Costs made during the months of January- December of the prior year.
- (b) Unless disputed as set forth below, Shared Easement Costs are due and payable by Furniture HOA within thirty (30) days of demand by the Commercial HOA. Interest may accrue at the rate of 18% per annum on delinquent payments.

- (c) Along with Commercial HOA's calculation of its respective proposed share of the Shared Easement Costs, Commercial HOA shall provide documentation to Furniture HOA to substantiate the calculation of the proposed share of the Shared Easement Costs.
- (d) Within thirty (30) days of receiving the documentation and calculation of its respective proposed share of the Shared Easement Costs, Furniture HOA must either pay the amount owing to Commercial HOA or submit a written objection or dispute of the calculation. If objected or disputed, the Parties shall then seek to resolve the dispute pursuant to Section 7 of this Agreement.

5. No Interference with Easements. Neither the Furniture HOA nor the Commercial HOA, nor any of the Furniture Benefited Parties or the Commercial Benefited Parties shall make or place any obstruction, whether temporary or permanent in nature, which unreasonably limits or impairs the free and unimpeded use of the easement rights, except as follows:

- (a) In an emergency to prevent harm to persons or property;
- (b) For reasonable construction, repair, maintenance or safety measures;
- (c) For traffic regulation and control to the extent required by applicable code, ordinances, and other legal requirements;
- (d) As otherwise allowed in this Agreement or the Easement Agreement; or
- (e) On a temporary basis to the extent reasonably necessary to prevent a public dedication or the accrual of rights to the public.

6. Non-Use. No obligation arising out of or right granted under this Agreement shall lapse because of non-use of the Easement Areas.

7. Dispute Resolution. Unless the Parties agree otherwise in a writing signed by both Parties, any dispute arising under the Agreement shall be resolved by the following Dispute Resolution Procedure:

- (a) Good Faith Attempt to Resolve Disputes. In the event of a dispute arising under this Agreement, the Commercial Board and Furniture Board shall attempt in good faith to promptly resolve the dispute by negotiation between designated representatives with authority to resolve the dispute.
- (b) Mediation. If the Parties are unable to resolve a dispute pursuant to Section 7(a), prior to exercising any other remedies available or required under this Agreement or otherwise available at law or equity, the Parties shall first attempt in good faith to settle any dispute arising out of or related to this Agreement or its breach by mediation in accordance with the Utah Uniform Mediation Act, Utah Code Ann. § 78B-10-101 ("**Mediation**"). Either Party may demand Mediation by written notice

to the other Party. The Mediation is to be administered by an impartial, neutral mediator agreed upon by the Parties. The Parties shall agree upon a mediator within seven (7) days of the demand for Mediation and shall hold the Mediation as soon as practicable thereafter, but no later than thirty (30) days after the Parties have agreed upon a mediator. If Mediation does not resolve the dispute, any Party to the dispute may then file a lawsuit in the Third District Court, Salt Lake County, Utah to resolve the dispute.

- (c) **Costs of Dispute Resolution.** The Parties shall equally share all costs and fees charged by a mediator with respect to any Mediation under this Agreement. Each Party shall promptly pay their respective share of the costs and fees charged by the mediator. Except for the shared mediator costs and fees, the Parties shall each bear their respective other costs and attorney fees related to any Mediation under this Agreement, including attorney fees.

8. Insurance. The Parties are responsible to insure those portions of the Easement Areas lying within their respective property's boundaries. Furniture HOA is responsible to insure the FR Access Easement Area portion of the Primary Access Lane, and the Commercial HOA is responsible to insure the Secondary Access Lane and the Access and Utility Easement Area portion of the Primary Access Lane.

9. Covenants to Run with the Land. This Agreement shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of each Party and each Owner, any other party holding an interest in any Commercial Lot or Furniture Lot, and their respective successors and assigns.

10. No Public Dedication. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of any portion of the Easement Area or easements created hereby.

11. Conformance with Governmental Requirements. The Parties shall cause all their respective uses of the Easement Areas to be in conformance with all applicable federal, state, county and municipal laws, ordinances, regulations, and requirements.

12. Recording. Either Party may record this Agreement in the Recorder's Office.

13. Governing Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of Utah.

14. Cooperation. The Parties shall cooperate with one another in executing all documents required to complete or give effect to this Agreement.

15. Severability. If and to the extent that any court of competent jurisdiction holds any provision or any part of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement, unless such provision is a material term of the Agreement, in which case the entire Agreement shall be null and void.

16. Authority. Each Party represents and warrants to the other Party that it has the unencumbered right and full authority to enter this Agreement.

17. Waiver. No failure by either Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any breach of this Agreement.

18. Attorney Fees. Subject to the Dispute Resolution Procedure in Section 7 above, which provides that the Parties shall incur their own attorney fees as to a mediation commenced pursuant to Section 7, if a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing Party shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, in addition to all other amounts provided by law.

19. Remedies. Subject to the Dispute Resolution Procedure in Section 7 above, in the event that either Party fails to perform any obligation under this Agreement, the other Party shall be entitled to demand specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party reaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other.

20. Restriction on Amendment of Governing Documents. Each Party agrees not to allow any amendment to their governing documents which would negatively affect the obligations imposed in this Agreement, impair the easement rights enjoyed by the Parties, or prevent such Party's power to assess its members for such Party's share of the Shared Easement Costs as contemplated in Section 4 of this Agreement without the prior written consent of the other Party, or its successors-in-title.

21. Term. The term of this Agreement will begin on the Effective Date and shall continue in full force and effect in perpetuity, or until amended or terminated pursuant to the terms set forth herein.

22. Amendment. This Agreement may be amended by a majority vote of the Commercial Board and a majority vote of the Furniture Board. If amended, such signers must be authorized in accordance with their Party's governing documents to sign a document binding the respective Party. Any amendment may be recorded with the Recorder's Office.

23. Notices. Any notice required or permitted to be given to any Owner or Party according to the provisions of this Agreement shall be deemed to have been properly furnished if personally delivered in writing, emailed, or if mailed, to the address provided to the other Party for notice purposes. If no address is provided, then notice shall be effective if delivery is made to the address or email address listed with Utah's HOA Registry.

24. Acknowledgement. The Parties respectively acknowledge that the terms of this Agreement accurately reflect their understanding and agreement and that they are signing this Agreement freely and voluntarily.

25. Drafting. This Agreement shall be construed without regard to the Party responsible for its preparation.

26. Headings. The headings in the paragraphs of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect the construction or interpretation of any terms of this Agreement.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

28. Effective Date. The Effective Date of this Agreement shall be the date on which the last signature necessary to make this Agreement effective has been affixed hereto.

29. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and may not be amended or modified without a writing signed by each Party specifically amending this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, discussions, negotiations or representations, oral or written, and no party is relying on any prior or contemporaneous agreements, discussions, negotiations or representations, oral or written, with respect to the subject matter of this Agreement.

[Remainder of this page intentionally left blank]

DATED as of the _____ day of August, 2022.

COPPER RIM FURNITURE ROW ASSOCIATION, INC.

a Utah nonprofit corporation

By: _____

Name: _____

Its: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

On the __, day of August, 2022, personally appeared before me _____, who by me being duly sworn, did say that she/he is an authorized representative of Copper Rim Furniture Row Association, Inc., and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public

Depiction of the Primary Access Lane (consisting of both the Access and Utility Easement Area and the FR Access Easement Area) & the Secondary Access Lane (Secondary Access Easement Area)

EXHIBIT A

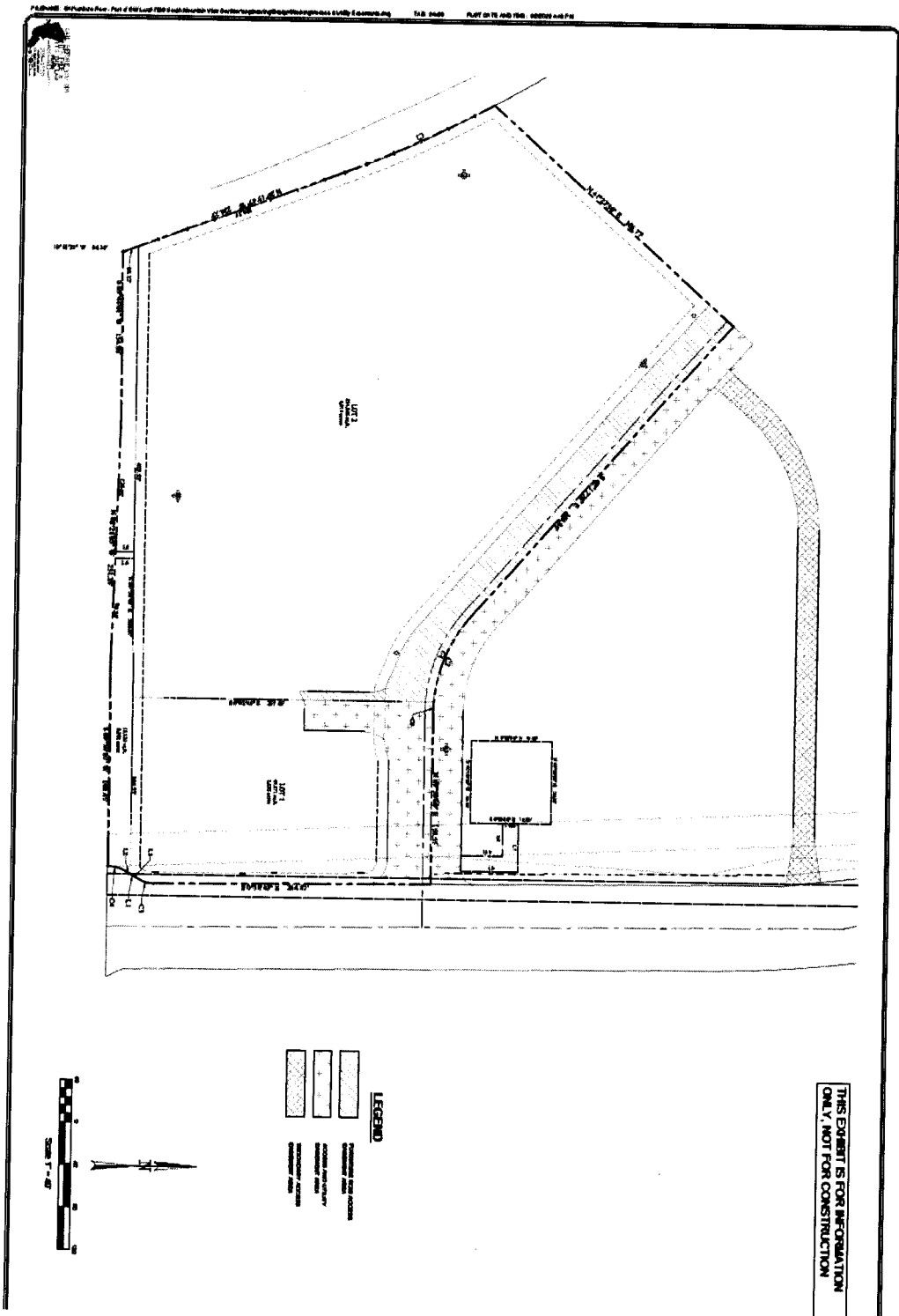


EXHIBIT B
LEGAL DESCRIPTIONS

EASEMENT 1:

A STRIP OF LAND FOR INGRESS-EGRESS AND UTILITIES SITUATE IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT NORTH 89°58'35" EAST 278.41 FEET ALONG THE SOUTH SECTION LINE AND NORTH 0°01'25" WEST 666.66 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; AND RUNNING THENCE NORTH 41°22'36" EAST 25.00 FEET; THENCE SOUTH 48°17'26" EAST 360.99 FEET TO A POINT ON A 117.00 FOOT RADIUS CURVE TO THE LEFT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE 85.24 FEET (HAVING A CHORD OF SOUTH 69°09'43" EAST 83.37 FEET); THENCE NORTH 89°58'00" EAST 149.58 FEET TO A POINT ON A 13.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 20.56 FEET (HAVING A CHORD OF NORTH 44°39'38" EAST 18.48 FEET) TO THE WEST RIGHT OF WAY LINE OF COPPER RIM DRIVE; THENCE SOUTH 0°38'43" EAST 105.99 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT ON A 22.08 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 89°21'17" WEST, THENCE WESTERLY ALONG THE ARC OF SAID CURVE 34.44 FEET (HAVING A CHORD OF NORTH 45°20'22" WEST 31.06 FEET); THENCE SOUTH 89°58'00" WEST 94.19 FEET; THENCE SOUTH 73°13'13" WEST 8.66 FEET; THENCE SOUTH 79°28'27" WEST 11.01 FEET; THENCE NORTH 89°26'28" WEST 47.47 FEET; THENCE NORTH 70°35'58" WEST 9.95 FEET; THENCE NORTH 64°16'22" WEST 11.97 FEET TO A POINT ON A 106.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH 16°43'17" EAST, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 46.23 FEET (HAVING A CHORD OF NORTH 60°47'05" WEST 45.86 FEET); THENCE NORTH 48°17'26" WEST 408.74 FEET; THENCE NORTH 41°22'36" EAST 31.00 FEET TO THE POINT OF BEGINNING.

CONTAINS: 39,320 SQUARE FEET OR 0.903 ACRE

EASEMENT 2:

A STRIP OF LAND FOR INGRESS-EGRESS AND UTILITIES SITUATE IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN; DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT NORTH 89°58'35" EAST 626.89 FEET ALONG THE SOUTH SECTION LINE, AND NORTH 0°01'25" WEST 258.52 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; AND RUNNING THENCE NORTH 0°02'48" WEST 66.16 FEET TO A POINT ON A 36.10 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 89°29'25" WEST, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 16.32 FEET (HAVING A CHORD OF NORTH 13°27'37" WEST 16.18 FEET); THENCE SOUTH 89°26'28" EAST 47.47 FEET TO A POINT ON A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 49°29'30" EAST, THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 21.23 FEET (HAVING A CHORD OF SOUTH 20°13'53" WEST 20.79 FEET); THENCE SOUTH 0°02'48" EAST 56.67 FEET; THENCE WEST 20.19 FEET TO A POINT ON A 28.00 FOOT RADIUS CURVE TO THE LEFT, THENCE WESTERLY ALONG THE ARC OF SAID CURVE 17.42 FEET (HAVING A CHORD OF SOUTH 72°08'03" WEST 17.14 FEET) TO THE POINT OF BEGINNING.

CONTAINS: 2,882 SQUARE FEET OR 0.066 ACRE

EASEMENT 3:

A STRIP OF LAND FOR TEMPORARY EMERGENCY INGRESS-EGRESS SITUATE IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN; DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT NORTH 89°58'35" EAST 336.41 FEET ALONG THE SOUTH SECTION LINE

AND NORTH 0°01'25" WEST 648.42 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; AND RUNNING THENCE NORTH 48°17'26" WEST 24.00 FEET TO A POINT ON A 26.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS NORTH 25°40'15" WEST, THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 10.29 FEET (HAVING A CHORD OF NORTH 52°59'31" EAST 10.22 FEET); THENCE NORTH 41°39'16" EAST 35.70 FEET TO A POINT ON A 160.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 135.01 FEET (HAVING A CHORD OF NORTH 65°49'38" EAST 131.04 FEET); THENCE EAST 286.82 FEET; THENCE NORTH 80°33'17" EAST 41.57 FEET TO THE WEST RIGHT OF WAY LINE OF COPPER RIM DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES; (1) SOUTHERLY 2.85 FEET ALONG A 958.22 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THE CENTER OF WHICH BEARS SOUTH 84°31'39" WEST (HAVING A CHORD OF SOUTH 5°23'14" EAST 2.85 FEET); THENCE (2) SOUTH 7°03'35" EAST 28.72 FEET; THENCE (3) SOUTH 0°38'39" EAST 2.32 FEET; THENCE NORTH 81°19'45" WEST 45.35 FEET; THENCE WEST 286.82 FEET TO A POINT ON A 140.00 FOOT RADIUS CURVE TO THE LEFT, THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 118.13 FEET (HAVING A CHORD OF SOUTH 65°49'38" WEST 114.66 FEET); THENCE SOUTH 41°39'16" WEST 35.77 FEET TO A POINT ON A 26.00 FOOT RADIUS CURVE TO THE LEFT, THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 10.24 FEET (HAVING A CHORD OF SOUTH 30°22'19" WEST 10.17 FEET); TO THE POINT OF BEGINNING.

CONTAINS: 10,350 SQUARE FEET OR 0.238 ACRES