

After recording, return to:
Ivory Development, LLC
970 E Woodoak Lane
Salt Lake City, UT 84117

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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS

FOR

HARVEST GARDENS

IN

RIVERTON, UTAH

THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN ARTICLE 14, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND WARRANTY LIMITATIONS AND DISCLAIMERS IN ARTICLE 15.

27-29-128-009 through 018

27-29-129-023

27-29-129-024

27-29-130-001 through 018

27-29-131-001 through 016

27-29-132-001 through 005

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS**

FOR

HARVEST GARDENS

RECITALS

- A. Ivory Development, LLC is the owner and developer of certain real property located in Riverton, Utah more particularly described on Exhibit A hereto (the "Property"). The Property has been or will be developed as an Age Restricted Community.
- B. Ivory Development, LLC, as developer and Declarant, hereby establishes and adopts this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Project, effective as of the date this instrument is recorded with the Office of Recorder for Salt Lake County, Utah, to establish a governance structure and standards and procedures for the development, expansion, administration, maintenance, and preservation of Harvest Gardens as an Age Restricted Community.
- C. The Project is an age-restricted residential community which includes attached and detached single-family homes. An integral part of the development of the Project is the formation of a community association, as a Utah nonprofit corporation, to own, operate and maintain the private roads and certain other common improvements, to provide certain services, and to administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act. The Terms and Conditions herein are established for the mutual benefit and burden of the Association, present and future Owners, Occupants, Lenders, and others acquiring any interest in the Project.
- D. This Declaration is intended and shall run with the land and shall be binding upon the Declarant, and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Lot, an Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant's development of the Project and accepts the burdens and responsibilities that accompany these benefits.
- E. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

NOW, THEREFORE, for the reasons recited above and subject to the Terms and Conditions set forth below, the Declarant hereby adopts this Declaration.

ARTICLE 1
DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean and refer to the Community Association Act, Utah Code §§ 57-8a-101 *et seq.*

- 1.2 “Age Qualified Occupant” shall mean and refer to any person fifty-five (55) years of age or older who occupies a Lot.
- 1.3 “Age Restricted Community” shall mean and refer to a development in compliance with 42 U.S.C. § 3607(b) of the Fair Housing Act and all other applicable state and federal housing laws.
- 1.4 “Age Restriction” shall mean and refer to the requirement that the Project provide housing primarily for persons fifty-five (55) years of age or older and shall be operated as an Age Restricted Community such that at least eighty percent (80%) of the occupied Lots shall be occupied by at least one person fifty-five (55) years of age or older.
- 1.5 “Allocated Interest” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units, subject to provisions in Article 6 and Article 14 herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.
- 1.6 “Articles” shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.7 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.8 “Association” shall mean and refer to Harvest Gardens Homeowners Association, the membership of which shall include and be comprised of each Owner in the Project. The Association shall be incorporated as a Utah nonprofit corporation.
- 1.9 “Bylaws” shall mean and refer to the bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.10 “City” shall mean and refer to Riverton City, a political subdivision of the State of Utah, located in Salt Lake County, Utah.
- 1.11 “Common Areas” or “Common Area and Facilities” shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City, and, specifically, shall include, but not be limited to, the following: (a) the private roads within the Project not dedicated to the City; (b) all common improvements identified on the Plat; and (c) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area.
- 1.12 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) landscape maintenance and other services; (d) insurance required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other

- expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.13 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or initially established by the Declarant consistent with the requirements of the standards described in this Declaration, Design Guidelines, or Rules. The Community-Wide Standards may or may not be set forth in writing.
- 1.14 “Declarant” shall mean and refer to Ivory Development, LLC and its affiliates, successors, and assigns.
- 1.15 “Declarant Control Period” shall mean and refer to the period of time during which the Declarant owns any land within the Project.
- 1.16 “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Harvest Gardens and all valid supplements and/or amendments to this Declaration.
- 1.17 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Articles, and any rules and regulations or design guidelines adopted by the Declarant or the Management Committee for the Association, any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.18 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.19 “Lot” shall mean and refer to an individual lot created on the Plat on which an attached or detached single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as “Lots.”
- 1.20 “Manager” shall mean and refer to the Person or Persons engaged by the Management Committee to manage the Project.
- 1.21 “Management Committee” shall mean and refer to the body with primary authority to manage the affairs of the Association and also commonly referred to as a Board of Directors or the Board.
- 1.22 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, and invitees of an Owner or an Occupant.
- 1.23 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Salt Lake County, Utah. The term “Owner” shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term “Owner” also shall not include the Declarant. More than one Owner is referred to herein as “Owners.”
- 1.24 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as “Persons.”

- 1.25 “Plat” shall mean and refer to the record of survey map or maps for Harvest Gardens and any portions thereof, recorded with the Office of Recorder for Salt Lake County, Utah, and all recorded amendments and supplements thereto.
- 1.26 “Project” shall mean and refer to the Harvest Gardens development and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time the Supplement to Declaration and plat map for the additional land is recorded.
- 1.27 “Property” as previously defined herein, shall include all easements and rights appurtenant thereto.
- 1.28 “Qualified Occupant” shall mean and refer to a person that is eighteen (18) years of age or older.
- 1.29 “Rules” shall mean and refer to the rules and regulations and fine schedule adopted by the Association.
- 1.30 “Subdivision” shall mean and refer to the Harvest Gardens development, including all Units, Common Areas and Facilities, and other property within the Project as shown on the Plat covering the entire Property.
- 1.31 “Subdivision Improvements” shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public road access and/or utility service to the Units.
- 1.32 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.33 “Twin Home” shall mean and refer to an attached single-family dwelling located on a Lot as shown on the Plat.
- 1.34 “Unit” shall mean and refer to a subdivided Unit within the Subdivision depicted as a separately identified parcel on the Plat which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a residential unit. The term “Unit” includes the Lot and any dwelling constructed thereon, as well as to any structures or other improvements on the Unit. In the case of a Twin Home, each dwelling shall be deemed to be a separate Unit. The term “Unit” does not include Common Area and Facilities or property dedicated to the City or the public.

ARTICLE 2 THE PROJECT

- 2.1 Binding Effect of Governing Documents. The Declarant hereby declares and Association hereby confirm that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her/their heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.

- 2.2 Nature of the Project. The Project is a planned residential development that contains or will contain fifty-one (51) Units. The Project includes attached Twin Homes and detached single-family homes. The Project is an Age Restricted Community subject to the Housing for Older Persons Act of 1995, 24 CFR Part 100. The Project is not a cooperative and is not a condominium.
- 2.3 Project Name. The Project is named "Harvest Gardens." Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.5 Expansion of Project. Subject to approval by the City, the Project may be expanded or contracted by the Declarant. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and subject to this Declaration by recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.
- 2.6 Age Restriction. Declarant desires and intends that the Property be operated to provide housing opportunities for persons aged fifty-five (55) and older in accordance with 42 U.S.C. § 3607(b) of the Fair Housing Act. Once a Lot is occupied by an Age Qualified Occupant, other Qualified Occupants of that Lot may continue to occupy that Lot, regardless of the termination of the Age Qualified Occupant's occupancy, if at least eighty percent (80%) of the Lots within the Property are occupied by at least one person fifty-five (55) years of age or older.
- 2.7 Intent to Comply with Federal Requirements. The Declarant or the Association will publish and adhere to policies and procedures that demonstrate its intent to provide housing for Age Qualified Occupants, such as written rules, regulations, lease provisions, deed restrictions, advertising, actual practices, and so forth. Declarant and the Association will comply with all of the rules issued by the Secretary of Housing and Urban Development for verifications of occupancy through reliable surveys and affidavits. Owners and Occupants shall be required to cooperate in providing age verification. Unless otherwise provided by law, the Association will re-survey its list of residents at least once every two (2) years to ensure that the 80% requirement is met.
- 2.8 Exclusions. The following may be excluded from the calculation of the 80% requirement: (a) unoccupied Lots within the Property; (b) Lots occupied by employees of the Association who are under the age of 55 and who provide substantial management and maintenance services to the Property; and (c) Lots occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents of the Property. In order to not risk losing the exemption provided by the Housing for Older Persons Act of 1995, if Age Qualified Occupants die with survivors or heirs who are under age 55, re-sales and leases of such Lots previously occupied by an Age Qualified Occupant may be restricted by the Association to occupancy by at least one Age Qualified Occupant.

- 2.9 Advertisements. Declarant or its designee may advertise or market the 20% portion of the Lots within the Property which are not required to be occupied by at least one Age Qualified Occupant to prospective buyers under the age of 55 who are Qualified Occupants and/or to families with children, but the marketing must be done in a way that identifies the Property as housing intended for older persons. Advertising and marketing must be consistent with that intent.
- 2.10 Temporary Absence. If an Age Qualified Occupant is on vacation, hospitalized, on sabbatical, providing ecclesiastical, philanthropic, humanitarian or related service or otherwise absent for a season, such Age Qualified Occupant may allow a younger relative or house sitter who is a Qualified Occupant to live in such Age Qualified Occupant's Dwelling or Unit during such absence, in which case, such Dwelling or Unit shall be deemed in compliance with the 80% occupancy requirement as long as the Dwelling or Unit is not leased to such relative or house sitter, and provided that the Age Qualified Occupant returns on a periodic basis and maintains legal and financial responsibility for the Dwelling or Unit.
- 2.11 Enforcement. The Association shall have the power and authority to specifically enforce the provisions of this Supplement and the Age Restriction by any legal or equitable means available, as the Association deems reasonably appropriate.
- 2.12 Prohibition on Sale in Violation of Age Restriction. Each Owner of a Unit within the Property shall have and enjoy the privileges of fee simple ownership of his/her/their Unit; however, the Property is intended to be an Age Restricted Community and, as such, is intended and operated for occupancy by persons aged fifty-five (55) and older. Declarant and/or the Association are granted and hereby expressly reserve the unilateral right to void any re-sale or lease of a Lot in violation of the Age Restrictions by recording a written "Notice of Election to Void Sale or Lease for Violation of Age Restrictions" or its equivalent in the Official Records of Salt Lake County, Utah.

ARTICLE 3

DESCRIPTION OF THE UNITS AND ALLOCATED INTERESTS

- 3.1 The Unit.
- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
 - (b) Each Unit generally consists of all structures and improvements on or within the boundary of the Lot, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall.
 - (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

- 3.2 Allocated Interest of Each Unit in the Votes of the Association. The Owner(s) of each Unit shall be entitled to vote his/her/their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant in Article 14 herein. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.
- 3.3 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association.

ARTICLE 4
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 4.1 Organization of Association. The Association shall serve as the organizational body for all Owners. The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Declaration and Bylaws.
- 4.2 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 4.3 Management Committee. The governing body of the Association shall be the Management Committee selected pursuant to the Bylaws, subject to the provisions of Article 14 herein. The Management Committee shall consist of at three (3) individuals. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Management Committee, in all instances, shall act 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 Management Committee. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

- 4.4 Management Committee Member Qualifications. Except during the Declarant Control Period, to serve on the Management Committee, an individual must be an Owner, or the spouse of an Owner, current on payment of Assessments, and over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee if the other qualification requirements are met.
- 4.5 Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee. No individual Management Committee member or individual Owner shall have authority to or is authorized to act on behalf of the Association to:
- (a) amend or terminate any Governing Document;
 - (b) elect or remove members of the Management Committee;
 - (c) establish or change the qualifications, powers and duties, requirements, or terms of Management Committee members or of the Management Committee;
 - (d) authorize or agree to any deviation or exception from the Terms and Conditions.
- 4.6 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee 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 or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project 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.
- 4.7 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 under the Act.
- 4.8 Availability of Documents.
- (a) Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act. The Association shall have no obligation to establish or maintain any records except those expressly required by law.
 - (b) Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Association within thirty (30) days of receipt of a written request.

ARTICLE 5

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities set forth in this Article 5 in addition to any others set forth in the Governing Documents or provided by law.
- 5.2 Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association, including Lot landscape maintenance and snow removal from the private roads and walkways. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Project and the Common Areas and Facilities, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards.
- 5.3 Insurance. The Association shall obtain insurance as required by Part 4 of the Utah Community Association Act. It is the intent of this Section that any future changes to the insurance law applicable to community associations shall apply to the Association. Notwithstanding anything in this Section to the contrary, and to the extent permitted by law, property insurance obligations and costs for Twin Home Units shall be the responsibility and the obligation of those Twin Home Units, and may be assessed directly to those Owners as a special Assessment in accordance with the provisions of Article 6 herein.
- (a) The Association shall obtain comprehensive commercial general liability (CGL) insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Association.
 - (b) The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
 - (c) 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 standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

- 5.4 Paying Expenses. The Association shall provide for the payment of Association expenses.
- 5.5 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 5.6 Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. Rules, if are adopted, shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. Pursuant to § 57-8a-218(15) of the Act, the requirements of § 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Association.
- 5.7 Hiring Managers and Delegating Responsibilities. The Association shall hire a Manager to assist the Management Committee 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 Management Committee shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause.
- 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: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights; (d) suspend rights to utilize the Recreational Amenities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.9 Discretion in Enforcement.
- (a) Subject to the discretion afforded in this section, the Management Committee uniformly and consistently shall enforce and implement the Terms and Conditions in the Governing Documents.
 - (b) The Management Committee shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to (i) impose sanctions, (ii) pursue legal action for a violation of the Governing Documents, (iii) compromise a claim made by or against the Management Committee or the Association; and (iv) pursue a claim for an unpaid Assessment.
 - (c) Consistent with Subsection (b) of this Section, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Management Committee determines that under the particular circumstances: (i) the Association's legal position does not

justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

- (d) Subject to Subsection (e) of this Section, if the Management Committee decides under Subsection (c) above to forego enforcement, the Association shall not be prevented from later taking enforcement action.
- (e) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

- 5.10 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the provisions of the Governing Documents.
- 5.11 Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- 5.12 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Management Committee may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 5.13 Reinvestment Fee Covenant upon Sale or Transfer of Unit. The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "Reinvestment Fee") as provided for in Utah Code § 57-1-46 in an amount to be determined by the Management Committee and allowed by law. For purposes of this Section 5.16, a transfer is any change in the ownership of the Unit as reflected in the Office of Recorder for Salt Lake County, Utah, regardless of whether it is pursuant to the a sale of the Unit or not but shall not include any transfer between the Declarant and a bulk purchaser of ten or more Units or Lots or between the Declarant and any affiliated entity. The amount shall be set forth by the Management Committee in the Rules consistent with Utah Code § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Unit for purposes of this section shall be the higher of: (a) the purchase price

paid for the Unit, related to the transfer; (b) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed \$250 or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

5.14 No Warranty or Guaranty of Security. Neither the Declarant nor the Association, shall, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Management Committee are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

5.15 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

ARTICLE 6
BUDGETS & ASSESSMENTS

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 6.2 Budget and Regular Assessment.
- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year prior to the beginning of each fiscal year. The Management Committee may revise that budget from time to time as it deems appropriate.
 - (b) The budget shall cover the period of the next fiscal year. 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.
 - (c) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit, subject to the provisions of Article 14 herein.
 - (d) The Management Committee shall present the adopted budget to the Owners at an annual or special Association meeting.
 - (e) Except during the Declarant Control Period, a budget may be disapproved within forty-five (45) days after the date of the meeting at which the budget was presented if: (i) the holders of at least fifty-one percent (51) of the total Allocated Interests in the Association vote to disapprove the budget; and (b) such vote is taken at a special meeting called for that purpose in accord with the requirements set forth in the Bylaws.
- 6.3 Reserves. Subject to the provisions of Article 14 herein, the Association shall maintain a reserves for the maintenance, repair, and replacement of the Common Area and Facilities which cannot reasonably be funded from the annual budget and shall periodically obtain a reserve study, consistent with the requirements in Utah Code § 57-8a-211. Reserve funds may be collected as part of regular or special Assessments. In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Management Committee determines, based on the reserve analysis, to be prudent.
- 6.4 Payment of Assessments. Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment annually or on such other quarterly or monthly installment basis as the Management Committee or the Manager may determine.

- 6.5 Adjustments to Regular Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.
- 6.6 Personal Obligation for Assessment. Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents. Any and all Assessment, together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.
- 6.7 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.
- 6.8 Percentage Assessments. Except as otherwise provided herein, and except for special Assessments to individual Units, Assessments shall be allocated to Owners based on the Allocated Interest of each Unit.
- 6.9 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.10 Special Assessments to a Particular Unit or Units. Special Assessments may be levied by the Association against a particular Unit and its Owner or Units and their Owners for:
- (a) Charges designated by the Management Committee or the Manager as pertaining to the individual Unit or to Units consistent with the Governing Documents, including, but not limited to, property insurance costs attributable solely to the Twin Home Units and culinary and irrigation water charges for those Units whose water usage is jointly metered;
 - (b) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest; and
 - (d) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.11 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 benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Management Committee, in its discretion.

- 6.12 Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.13 Certificate of Payment. Consistent with Utah Code § 57-8a-206, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Management Committee is authorized to charge a ten dollar (\$10.00) fee for issuance of a certificate; provided, however, the Management Committee may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.14 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 Management Committee, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. The Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.15 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

- 6.16 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

ARTICLE 7

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 7. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by taking title to a Unit, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.2 Collection Charges and Interest. if the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of thirty-five dollars (\$35.00). Thereafter, an additional late fee charge of thirty-five dollars (\$35.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she/they has/have lawfully transferred title to the Unit to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Unit.
- 7.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Unit for

all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (a) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.

- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's Unit and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).
- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson as trustee, who qualifies under Utah Code § 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code § 57-1-20 and 57-8a-302 to Melyssa D. Davidson, with power of sale, the Unit, and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.7 Waiver of Homestead Exemption. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 7.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote on Association matters; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:
- (a) the impending termination of rights if payment is not received;
 - (b) the amount(s) past due, including any interest and late charges; and
 - (c) the right to request a hearing before the Management Committee.

- 7.9 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy 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 (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 7.10 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments or maintain the Unit.

ARTICLE 8

EASEMENTS AND RIGHT TO USE COMMON AREA AND FACILITIES

- 8.1 Rights and Nonexclusive License to Use Common Area and Facilities. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Management Committee.
- 8.2 Utility Easements. Easements and rights-of-way over, under and through the Project for the installation and maintenance of utilities and/or lines, equipment, and/or systems needed or determined by the Management Committee to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities and Units for the purpose of

constructing, erecting, operating, or maintaining utility lines, meters, and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

- 8.3 Easements for Encroachments. If any portion of the Common Area and Facilities or any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.
- 8.4 Other Easements and Access Rights Reserved to the Association. The Association shall have nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and Facilities and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Association is responsible for maintaining which are accessible from such Lot. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities for purposes necessary for the proper operation of the Project.
- 8.5 No View Easements, Warranties, or Guarantees. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

ARTICLE 9

GENERAL OWNER REQUIREMENTS, USE RESTRICTIONS, AND CONDITIONS

- 9.1 Areas of Owner Responsibility. Each Owner shall be responsible for the maintenance, repair, and upkeep of the Owner's Unit, including the exterior of the Unit, including responsibility for ice and snow removal not assumed by the Association and Units shall be kept in good and sightly condition. The Declarant shall be responsible for initial landscaping for the Unit, including, sod, trees, shrubs, and other plantings in accordance with applicable City ordinance and the Community-Wide Standards established for the Project.
- 9.2 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the

rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any applicable ordinance, statute, rule, or regulation of any local, City, county, state, or federal agency.

- 9.3 No Temporary Structures. Subject to the provisions in Article 14 herein, no structure or building of a temporary character, including a tent, trailer, or shack, shall be placed on any Lot unless it is approved by the Management Committee.
- 9.4 Parking Restrictions. Unless otherwise permitted by the Association in the Rules, no automobiles or other vehicles of any type (including, without limitation, oversized, commercial, or recreational vehicles, boats, or trailers) shall be parked, stored, or located within any portion of the Project except in the Unit's driveway or garage. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove or immobilize or cause to be removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict or limit parking on City or public roadways within the Project by Owners, Occupants and by people associated with the use of Units. Notwithstanding anything to the contrary herein, nothing in this Section shall give the Association any general police powers over the public portions of the project or the portion of the Project dedicated to the City.
- 9.5 No Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to City ordinance, no radio, stereo, broadcast, speaker, or projection of sound or music on or directed to the outside of any dwelling shall be permitted.
- 9.6 Restrictions on Repairs. No repairs of any motor vehicles, detached machinery, equipment, or fixtures shall be made within the Project except within a dwelling's closed garage or as otherwise may be permitted by the Management Committee in the Rules.
- 9.7 No Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers, machinery, and equipment not a part of the Unit, shall be prohibited on Unit unless screened from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed of.
- 9.8 Restrictions on Animals. Animals generally kept in households such as dogs, cats, birds, and fish are allowed in the Project, subject to the terms and conditions of this Declaration and the Rules; provided, however, that no more than two (2) animals of any type may be kept in a Unit. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. Owners and Occupants shall be responsible to immediately clean up their animal's fecal matter within the Project. The Management Committee may adopt Rules

adding further Terms and Conditions related to animals within the Project not inconsistent with this Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have animals, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the Project shall be liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal.

9.9 Restrictions on Business Conducted from a Unit. No business may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;
- (b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
- (c) the business activity does not involve solicitation of Occupants or Owners of the Project;
- (d) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Management Committee, in its sole discretion;
- (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
- (f) the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
- (g) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (h) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
- (i) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

9.10 Restrictions on Leasing and Non-Owner Occupancy. Leasing and non-owner occupancy of Units in the Project shall at all times be subject to the requirements of the Housing for Older Persons Act of 1995. No Owner may lease or allow his/her/their Unit to be occupied in any manner that would risk or cause the Association to lose its exemption under the Housing for Older Persons Act of 1995. To ensure compliance with the Housing for Older Persons Act of 1995, the Management Committee may adopt Rules further regulating lease and non-Owner occupancy of a Unit and regarding reporting and

procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units, including but not limited to:

- (a) Requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like;
- (b) Requiring written lease agreements which contain age verification certifications, requiring reliable age verification documents to be obtained from prospective occupants and provided to the Association;
- (c) Restricting the number of Units that may be occupied by non-Age Qualified Occupants, establish an age limit for occupancy of Units that are not occupied by an Age Qualified Occupant, or requiring that every Unit be occupied by at least one Age Qualified Occupant.
- (d) Establishing other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration; and
- (e) Limiting the total number of Non-Owner Occupied Units within the Project if necessary to satisfy the requirements of a Lender for financing the purchase of Units.

9.11 No Interference with Snow Removal and Snow Stockpiling. The Association may establish locations within the Project, which may change from time to time, to stockpile snow and ice accumulated during winter months which may encroach on Common Areas and Facilities. No Owner, Occupant or invitee may block, obstruct, impair, impede, or otherwise interfere with any snow removal or snow stockpiling by the Association.

ARTICLE 10
DESIGN CONTROLS

- 10.1 Design Review. Except as otherwise provided in this Declaration, no modification or alteration to a dwelling's exterior or a Lot shall be constructed or permitted to remain on any without the prior review and written approval of the Management Committee or a designated sub-committee or designated design professional prior to the commencement of any work. Work subject to design review and approval may include, but is not limited to, any construction or modification of structure, installation of a utility line, installation or modification of fencing or grading of a Lot, any renovation, expansion, remodeling, or refinishing of the exterior of an existing Unit, or any construction or modification of a Twin Home which may in any way affect or impact the structural integrity of the building, any shared wall, or any shared utility. The provisions of this Article shall not apply to re-painting or re-staining of a detached dwelling's exterior or to an Owner's installation of additional plantings on the Owner's Lot, provided, however, that the Owner shall be responsible for the maintenance and irrigation of such additional plantings and for any additional costs incurred by the Association in connection with any landscape maintenance affected by such additional plantings. Any repainting or restaining of a Twin Homes exterior with a color different than the original color shall be subject to review and approval process.
- 10.2 Design Review Fees. The actual costs of design review, including the services of any design profession, shall be paid by Owner applying for plan review and approval, consistent with Utah Code § 57-8a-109(2).
- 10.3 Building Permits and Other Approvals. The design review and approval required under this Article 8 is an entirely different than and separate from any building permit or other permit or approval that may be required by the City or by any other governmental or quasi-governmental entity. Any and all necessary permits and approvals must be obtained prior to the commencement of construction or work. Notwithstanding any other provision in this Article 8 or in any Design Guidelines of the Association, the Management Committee or its designated sub-committee or design professional shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land-use regulations; (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other Person; (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist; or (d) any failure to carry out any construction in accordance with plans or specifications.

- 10.4 General Standards. In its review and consideration of an Owner's design review application, the following factors may be considered: (a) the materials to be used on the exterior of Unit; (b) exterior colors; (c) harmony of architectural elements and design with other Units and with the Declarant's design scheme for the Project; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of landscaping with the dwelling and with the Community-Wide Standard; (g) impact of lighting (interior and exterior) on night skies and neighboring Units; and (h) consistency of all of the foregoing with any Design Guidelines. Each Owner acknowledges, by taking title to a Unit, that determinations of the Management Committee or its designated sub-committee or design professional with regard to esthetic matters are subjective and may change as the composition of the Management Committee or the designated sub-committee or design professional.
- 10.5 Design Guidelines and Construction Rules. The Management Committee may promulgate, adopt, amend and/or replace Design Guidelines, construction rules, and other rules and regulations as may be necessary or useful to preserve and protect the Declarant's design scheme for the Project and/or property values.
- 10.6 No Liability. Neither the Declarant or the Association, or the Management Committee, or its designated sub-committee or design professional shall be liable for damages to any Owner or any other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any design review application or plans.
- 10.7 Inspection and Compliance. Neither the Declarant nor the Association or the Management Committee or its designated sub-committee or design professional shall any duty or obligation to make inspections of any construction. Nothing herein, however, shall prohibit inspections prior to, during, or after construction.
- 10.8 Enforcement. Any construction, alteration nor other work done or undertaken without first obtaining written approval shall be deemed to be a violation of this Declaration. Upon written notice of such a violation, an Owner, at his/her/their own expense, shall conform or remove the nonconforming construction, alteration, or other work and shall promptly restore the Unit or the affected portion thereof to substantially the same condition as existed prior to the nonconforming construction alteration or other work. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the Association in taking any corrective action, including attorneys' fees, regardless of whether a lawsuit was filed. The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Unit for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien as provided in Article 7.
- 10.9 Design Review Process Not Applicable to Declarant. Notwithstanding anything in Article to the contrary, the Design Review process and fees shall not apply to the Declarant.

ARTICLE 11
EMINENT DOMAIN

- 11.1 Taking of a Unit. If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Areas and Facilities are taken.
- 11.2 Taking of Common Area. If the Common Area and Facilities, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 11.3 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated, and the Management Committee shall wind down the Association in accordance with applicable law.
- 11.4 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

ARTICLE 12
AMENDMENT

- 12.1 General Amendment Requirements. Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article 14 herein and elsewhere in this Declaration, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 12.2 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 12.1 shall be executed by the President and the Secretary of the Management Committee shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the Office of the Recorder for Salt Lake County, Utah.

ARTICLE 13
INTERPRETATION AND CONSTRUCTION

- 13.1 Interpretation of Declaration and Applicability of the Act. The Declarant intends that 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.

- 13.2 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 13.3 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 13.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a mixed-housing residential master-planned community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 13.5 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.
- 13.6 Owners Liable for Legal Fees Incurred Irrespective of Litigation. In addition to any other attorney fee provision herein, if the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess its reasonable legal costs incurred in such enforcement to the Owner irrespective of whether litigation is initiated by the Association to compel compliance with such Term and Condition.
- (a) Exception to Owner's Liability for Legal Fees. If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Term and Condition, or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those legal fees shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

ARTICLE 14
DECLARANT RIGHTS

- 14.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the all rights and powers provided for in this Article 14. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article.
- 14.2 Right to Appoint the Management Committee During Declarant Control Period. The Declarant shall have the right to appoint and remove all Management Committee members during the Declarant Control Period. In the appointment of Management Committee members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of more or fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee members pursuant to the rights granted in the Articles to the Declarant.
- 14.3 Declarant Retains All Rights and Authority During Declarant Control Period. During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers and authority for design review and approval, without the Management Committee’s appointment.
- 14.4 Easement Rights. The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.
- 14.5 Right to Amend Plat. Subject to necessary approvals from the City or any government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.
- 14.6 Assessment Exemption. The Declarant shall be exempt from any Assessments including any Regular Assessment or special Assessment.

- 14.7 Right to Amend Declaration, Bylaws, Articles, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, the Bylaws, the Articles, and any Design Guidelines and Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to § 57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.
- 14.8 Assignment of Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.
- 14.9 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.
- 14.10 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 14, may not be substantively or procedurally altered during the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void *ab initio*.
- 14.11 Use of Units and Common Areas and Facilities for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking.

- 14.12 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 14 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner, by taking title to a Unit, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of any Declarant Rights.
- 14.13 Declarant Exemption from Statutory Obligations. Pursuant to § 57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act and Article 14 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

ARTICLE 15
CONFLICT AND LITIGATION AVOIDANCE

- 15.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner, by taking title to a Unit, and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. Accordingly, it is the intent and purpose of this Article to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

15.2 Waiver of Subrogation and Release. The Association and each Owner, by and upon taking title to a Unit, waive any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant (including principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives.

15.3 Restrictions on Legal Action Against Declarant, Mediation and Arbitration.

- (a) An Owner or the Association may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed: (i) the Owner or Association shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process (the "Right to Cure"); (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period to facilitate the Declarant's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) "Notice of Claim" shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged defect or condition, if applicable; (v) samples of

any alleged defective materials; (vi) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

- (d) The Association and owners Owners take ownership and possession of the Common Areas and Facilities "AS IS," with all faults and with no warranties of any kind except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULLEST EXTENT ALLOWED BY LAW.**
- (e) If otherwise allowed by law notwithstanding the terms of this Article, prior to the Association making any demand or commencing arbitration or other action (any "action") against a Declarant, the Association must have a properly-noticed meeting of the Owners, with all attorneys, experts, and other Persons expected to be involved in the claim(s) present at the meeting. Those Persons present, including the Management Committee, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:
 - (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 16-point font: "The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Unit and your ability to sell your Unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue";
 - (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected action including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the action will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;
 - (iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;
 - (iv) a legal opinion on the likelihood of success of any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

- (v) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and
- (vi) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action.

In addition to the requirements above and before commencing any action, the Association must obtain the approval of seventy-five percent (75%) of the total Allocated Interests in the Association (not 75% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Any such a special meeting must occur no sooner than thirty (30) days and not later than sixty (60) days after the meeting required above.

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

- 15.4 The provisions of this Article are separate from and in addition to the requirements in Utah Code 57-8a-229 governing liability of a declarant or the board of directors appointed by a declarant during a declarant period of control.

[Signature page follows]

Dated this 9th day of FEBRUARY, ~~2022~~ 2023

IVORY DEVELOPMENT, LLC.

By: *[Signature]*
Signature

CHRISTOPHER P. GANVROULAS
Printed Name

Its: PRESIDENT

STATE OF UTAH)

COUNTY OF SALT LAKE) ss.

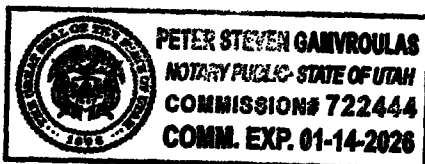
On this 9th day of FEBRUARY, ~~2022~~ 2023, personally appeared before me

CHRISTOPHER P. GANVROULAS, whose identity is personally known to me, (proven
(Name of Document Signer)

on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the

PRESIDENT, of IVORY DEVELOPMENT LLC
(Title or Office) *(Name of Entity)*

and that said document was signed by him on behalf of Ivory Development, LLC with all
necessary authority, and acknowledged to me that the company executed the same.



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The Units, Lots, and real property referred to in the foregoing Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Harvest Gardens are located in Salt Lake County, Utah and are described more particularly as follows:

Harvest Gardens Subdivision, Lots 1 through 51, inclusive as shown on the official subdivision final plat on file and of record with the Office of Recorder for Salt Lake County, Utah Recorded on May 23rd, 2022 as Entry No. 13956778, and improvements and appurtenances as shown thereon.

Parcel Numbers _____ through _____

EXHIBIT B

**BYLAWS
FOR THE
HARVEST GARDENS HOMEOWNERS**

The following bylaws are hereby adopted and established as the Bylaws for the Harvest Gardens Homeowners Association (the "Association"). These Bylaws and any valid amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants of the Project.

ARTICLE I
DEFINITIONS

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Harvest Gardens ("the Declaration") shall have the same defined meanings when used in these Bylaws.

ARTICLE II
REGULAR AND SPECIAL MEETINGS OF THE OWNERS

- 2.1 Annual Meetings.
- (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
 - (b) Date and Time. The date, time and location of the annual meeting shall be determined by the Management Committee, in its discretion.
 - (c) Purpose. The Annual Meeting shall be held for the following purposes.
 - (i) electing members of the Management Committee;
 - (ii) review of the budget for the following year;
 - (iii) announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
 - (iv) transacting such other business as may properly come before the meeting.
 - (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Management Committee's discretion, by the Management Committee at a subsequent meeting of the Management Committee.

- (e) Election of Management Committee Members. If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, or to be held via written ballot without a meeting, soon thereafter as may be convenient.

2.2 Special Meetings.

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

2.3 Place of Meetings. The Management Committee may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting.

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

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

2.6 Quorum. Those Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.

2.7 Proxies. At any regular or special meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any

issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or the Manager or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting.

- 2.8 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 Ballots and Written Consent. The Association may utilize written consents and/or written ballots for actions consistent with the requirements of the Revised Nonprofit Corporation Act for actions without a meeting to the fullest extent permitted by law.
- 2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request consistent with Section 4.4 of the Declaration.

ARTICLE III MANAGEMENT COMMITTEE

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) Number of Management Committee Members. The Management Committee shall be composed of three (3) individuals meeting the qualifications stated in the Declaration and Section 3.1(b) below, subject to the Declarant Rights set forth in the Declaration.
 - (b) Term. Except during the Declarant Control Period, and except for the terms of at least one (1) of the initial members of the Management Committee elected upon turnover of management of the Association from the Declarant to the Owners in order to create staggered Management Committee terms, the term of each Management Committee member shall be two (2) years.
 - (c) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her/their own name or the name of any other willing and otherwise qualified person to serve on the

Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee members unless it is submitted with a written statement signed by the nominated individual indicating that such individual is willing to serve.

- (d) **Disqualification.** If any Management Committee member is alleged to not meet the qualification requirements in the Declaration and any Management Committee member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee member is qualified or not, and during this period shall not make any further decisions. If the Management Committee member is not qualified, the Management Committee member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee member was not qualified. If a Management Committee member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section.
- (e) **Removal for Failure to Participate.** If any Management Committee member shall fail to appear at three (3) successive regular Management Committee meetings in a row or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Management Committee members may, by unanimous vote, remove that Management Committee member.

3.2 Meetings.

- (a) **Regular Meetings.** The Management Committee shall hold regular meetings at least annually, and more often at its discretion.
- (b) **Who Is Entitled to Attend.** Consistent with Utah Code § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session. Owners shall be afforded reasonable time for comment.
- (c) **Special Meetings.** Special meetings of the Management Committee may be called by or at the request of any two Management Committee members or the President. Notice of any special meeting shall be given at least 48 hours prior thereto to each Management Committee member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any

Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.

- (d) **Quorum and Manner of Acting.** A majority of the Management Committee members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee members shall be the act of the Management Committee. The Management Committee members shall act only as a Management Committee, and individual Management Committee Members shall have no powers as such.
- (e) **Place and Notice of Meetings.** The Management Committee may designate any place in the City as the place of meeting for any regular meeting called by the Management Committee but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Management Committee members and Owners shall be given at least five (5) days' notice of regular Management Committee meetings.
- (f) **Executive Session.**
 - (i) The Management Committee may, by motion and a vote, continue deliberations and discussions in executive session for any matter specified in Utah Code § 57-8a-227(3)(b) and shall discontinue any executive session by motion and a vote.
 - (ii) The minutes of a Management Committee meeting at which the Management Committee moves to an executive session is held shall include the purpose(s) of the executive session in sufficient detail. By way of example, the following are sufficient descriptions: "to discuss the terms of the contract with XYZ Company," "To discuss pending or threatened litigation," or "to discuss a complaint of a Rule violation." Any decisions made during executive session (not subject to attorney-client privilege or other privilege allowed by law) shall be promptly ratified by the Management Committee upon the return to the open Management Committee Meeting or at the following open Management Committee meeting or by informal action without a meeting as provided in Section 3.3 below. Meeting minutes for an executive session shall not be required.
 - (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

3.3 Informal Action and Action by Management Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken by the Management Committee without a meeting if each and every Management Committee member, in writing, either:

- (i) votes for the action or
 - (ii) votes against or abstains from voting, and does not exercise his/her/their right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
 - (i) Reasonably describing or referring to the action taken;
 - (ii) signed by each Management Committee member; and
 - (iii) not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective upon receipt of the number of affirmatives votes for the action that would be required for the action in a regular or special Management Committee meeting.
- (d) A Management Committee member may revoke consent to any action given pursuant to this section by communicating, in writing, that the member has changed his/her/their vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the last vote needed to meet the number of affirmative votes necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee and may be described as an action taken at a meeting of the Management Committee members in any document.
- (g) For purposes of this Section:
 - (i) “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
 - (ii) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
 - (iii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
 - (iv) Any response to any electronic communication shall be:
 - (v) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
 - (vi) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
 - (vii) A communication shall satisfy the requirement to “describe the action taken” if:

- (1) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describes or clearly references the email with the proposed action;
- (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
- (3) the writing from the Management Committee member otherwise sufficiently references the proposed action.

3.4 No Compensation. No Management Committee member shall receive compensation for any services that he/she/they may render to the Association as a Management Committee member; provided, however, that a Management Committee member may be reimbursed for expenses incurred in the performance of his/her duties as a to the extent such expenses are unanimously approved by the Management Committee.

3.5 Resignation and Removal. A Management Committee member may resign at any time by delivering a written resignation to any member of the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee member may be removed and replaced at any time, with or without cause, by the affirmative vote of a majority of the total Allocated Interests of the Association at a special meeting of the Owners duly called for such purpose or by informal action of the Owners.

3.6 Vacancies. If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee member is removed. Any Management Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their predecessor.

ARTICLE V NOTICE

5.1 Notice. Any notice to be given to an Owner, a Lender, or the Association shall be in writing and shall be deemed valid if provided by any of the below methods:

- (a) Notice to an Owner from the Association:
 - (i) by email correspondence to an Owner sent to an email address provided by the Owner to the Association or Manager or to an email address from which the Owner has communicated to any Management Committee member or the Manager regarding Association matters, so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered upon sending;

- (ii) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
 - (iii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
 - (iv) by written notice sent certified mail, return receipt requested or by any recognize commercial carrier with record of delivery (e.g., FEDEX, UPS), which shall be deemed effective upon delivery; or
 - (v) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.
 - (vi) Notwithstanding anything to the contrary in this Section, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners.
- (b) The Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be deemed effective upon the satisfaction of any of the following methods:
- (i) by email correspondence to the Association sent to an email address provided by the Association for the purpose of Association communications or to an email address from which the Manager or the Management Committee has communicated to Owners related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent;
 - (i) by a written notice delivered personally to the Manager or President, which shall be deemed effective upon delivery; or
 - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

ARTICLE V
OFFICERS

- 5.1 Officers. The officers of the Association shall be a president or chairperson (the “President”), vice-president or vice chairperson (“Vice-President”), secretary/treasurer (the “Secretary/Treasurer” or “Secretary”).
- 5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting. Each officer shall hold such office until a successor has been selected or until such officer’s death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office except during the Declarant Control Period. Except during the Declarant Control Period, all officers of the Association must be members of the Management Committee during the entire term of their respective offices.
- 5.3 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers need not be members of the Association.
- 5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.
- 5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.
- 5.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in “Robert’s Rules of Order” or “The Modern Rules of Order”; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The

President shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect Project. The President shall be responsible for the duties of any other office while that office is vacant.

- 5.7 The Vice President. The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.
- 5.8 The Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary/Treasurer shall also have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.
- 5.9 No 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 Management Committee.
- 5.10 Right to Delegate or Assign Duties. Notwithstanding anything in this Section to the contrary, the duties and authority of any office may be delegated or assigned to the Manager to the fullest extent allowed by law.

ARTICLE VI INDEMNIFICATION

- 6.1 Indemnification. No Management Committee member, officer, or member of any sub-committee of the Management Committee (including any Design Review 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 of said Management Committee member, officer, or sub-committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee member, officer of the Association, or a member of a duly formed sub-committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her/them as such Management Committee member, officer, or sub-committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with

any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence 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 indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

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

ARTICLE VII AMENDMENT

- 7.1 Amendment. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the Allocated Interest in the Association, provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period as set forth in the Declaration.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

ARTICLE VIII WAIVER OF IRREGULARITIES

- 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
- (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
- (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting,
- (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
- (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.

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

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

- (a) Any failure to comply with the provisions of the Declaration.
- (b) Any failure to obtain the proper number of votes required to pass a particular measure.