

When Recorded, Mail to:

Mountainville Development Corporation
44 Red Pine Drive
Alpine, UT 84004

Tax Parcel Nos: 27:037:0098
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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR MAPLETON HEIGHTS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MAPLETON HEIGHTS (this "**Declaration**") is made effective as of September 1, 2021, by Mountainville Development Corporation, a Utah corporation ("**Declarant**"), with respect to the following:

RECITALS

A. Declarant owns certain real property located in Mapleton City, Utah County, Utah, which is more particularly described on **Exhibit A** and depicted on **Exhibit B** attached hereto and by this reference made a part hereof (the "**Property**"). Declarant owns or may subsequently acquire additional real property located adjacent to or in the vicinity of the Property (the "**Additional Land**"), some of which Additional Land is described on **Exhibit C** attached hereto and by this reference made a part hereof. Declarant desires to develop, in phases, the Property and, in Declarant's sole discretion, possibly all or portions of the Additional Land as a master planned development known as Mapleton Heights (the "**Subdivision**"). The term "**Lot**" shall mean any parcel of real property designated as a lot on a recorded plat (a "**Plat**") pertaining to any phase (each a "**Phase**") of the Subdivision. Mapleton Heights is not a cooperative.

B. Declarant desires to form the Association (defined below) as a nonprofit corporation for the purpose of benefiting the Property and its Owners, which nonprofit corporation will establish, levy, collect and disburse the Assessments and other charges imposed hereunder.

D. Declarant desires to establish for its own benefit and for the mutual benefit of all future owners ("**Owners**"), mortgagees, residents, lessees, occupants and other holders of an interest in the Property, or any part thereof, certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Property.

E. Declarant desires and intends that the Owners, mortgagees, residents, lessees, occupants, and other holders of an interest in the Property and other persons hereafter acquiring any interest in or otherwise utilizing portions of the Property will at all times enjoy the benefits of the Property and will hold their interest therein subject to the rights, privileges, covenants and restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of Mapleton Heights and which are

established for the purpose of enhancing the value, desirability and attractiveness of Mapleton Heights.

F. Declarant therefore desires to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens and reservations set forth in this Declaration.

DECLARATION

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

In order to cause this Declaration and all of the covenants, conditions and restrictions set forth herein to run with the Property and to be binding upon the Property and the Owners, mortgagees, residents, lessees, occupants, and other holders of an interest therein from and after the date this Declaration is recorded, Declarant hereby subjects the Property to all of the covenants, conditions and restrictions set forth in this Declaration, and Declarant hereby declares that all conveyances of the Property, whether or not so provided therein, are and shall be subject to this Declaration, and by accepting deeds, leases, easements, or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, board of directors, personal representatives, successors and assigns, agree that they shall be personally bound by this Declaration (including but not limited to the obligation to pay Assessments), except to the extent those persons are specifically excepted therefrom, and they also agree that all portions of the Property acquired by them will be bound by and subject to this Declaration.

1. COVENANTS, CONDITIONS AND RESTRICTIONS.

(a) **Applicable to Entirety of the Property.** The covenants, conditions and restrictions described in this Section will apply to the entirety of the Property.

(b) **Construction of Improvements Within the Subdivision.** The term “**Improvement(s)**” shall mean any improvement now or hereafter constructed in the Subdivision and includes anything which is a structure, the construction of which is regulated by the Mapleton City Building Code (the “**City Code**” or the “**Code**”), including but not limited to any building, structure, shed, covered patio, fountain, pool, well, radio or television antenna or receiving dish, paving, curbing, landscaping, tank, fence, mailbox, sign, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel. No Improvements constructed on any Lot (whether temporary or permanent), alterations, repairs, excavation, landscaping or other work constructed on any Lot which in any way alters the exterior appearance of any portion of such Lot or the Improvements located thereon from its natural or improved state existing on the date this Declaration is recorded in the Office of the Recorder of Utah County, Utah, shall be made or done without the prior written approval of the Architecture and Landscape Review Committee (the “**Committee**”), pursuant to Sections 2, 3 and 4 of this Declaration. The construction of all Improvements upon a Lot within the Subdivision must comply with the City Code,

including without limitation the setback and height standards of the PD-4 Zone set forth in Chapter 18.78D of the City Code.

(c) **Land Use and Building Type.** No Lot will be used except for residential purposes. Unless otherwise authorized and approved by the Committee, no structure will be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not to exceed two stories in height and one private garage for not less than three vehicles, provided, however, with respect to any Lot having a building envelope less than 60 feet in width on the side of the building envelope facing the access street for such Lot, such Lot shall have one private garage for not less than two vehicles. To the extent authorized by the City Code, an accessory apartment may be included within the family dwelling upon obtaining prior written approval from the Committee. Unless otherwise authorized and approved by the Committee, no accessory apartments will be allowed in structures not attached to the principal residence, unless the Lot size is greater than one-half (1/2) acre. To the extent authorized by the City Code, a separate additional private garage, pool house or other detached structure may be erected or placed adjacent to the family dwelling only after obtaining prior written approval from the Committee.

(d) **Dwelling Size.** Unless otherwise authorized and approved by the Committee, all rambler type dwellings within the Subdivision shall have at least 1,900 square feet on the main level, exclusive of the basement, open porches, and garages. All two-story dwellings in the Subdivision shall have a minimum of 2,400 square feet exclusive of the basement, open porches and garages. Single level dwellings without a basement shall be a minimum of 2,200 square feet exclusive of the open porches, and garages.. Any deviations from this requirement must be approved in writing by the Committee. Exact exterior materials and colors will be submitted to the Committee for written approval prior to commencement of construction of any dwelling or structure. The Committee shall give consideration to dwellings on corner lots where the footprint of that lot requires a home shorter than the minimums described herein.

(e) **Storage Tanks.** No tank for storage of fuel may be maintained above the surface of the ground without the written consent of the Committee.

(f) **Storage of Materials.** No building material of any kind or character will be placed or stored upon any Lot until the Owner thereof is ready to commence the construction of improvements on the Lot, and then the material will be placed within the property lines of the Lot upon which the improvements are to be erected and will not be placed in the streets or in the planter strip between the curb and the sidewalk. Vacant Lots will be kept free of building materials, debris and rubbish.

(g) **Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats for Mapleton Heights. No Owner shall grant or create any easement or right-of-way of any nature or for any purpose upon such Owner's Lot or upon any other portion of the Subdivision without the prior written consent of the Board of Directors of the Association, which consent may be conditioned or withheld in the sole discretion of the Board of Directors. Except for overhead utility lines for electrical power, telephone, cable television, internet and other

similar purposes in existence as of May 1, 2021, all such utility wires, cable and lines must be installed underground, unless otherwise approved by Mapleton City and by the Committee. Such easements and rights-of-ways will be reserved for the use and benefit of Declarant, its successors and assigns, or for the use and benefit of designated utility providers, in and over the Property for the erection, construction, maintenance, repair, replacement and operation therein of drainage pipes, conduits, poles, wires and other means of conveying to and from Lots in the Subdivision natural gas, electricity, power, water, telephone, sewer, and any other utility services.

(h) **Animals.** Keeping of animals or fowls other than those ordinarily kept as family pets will be prohibited, excepted on Lots having an area equal to or greater than one (1) acre, and on such larger Lots the Committee must approve the types and number of animals and/or fowls to be kept. As contemplated herein, "ordinarily kept" family pets will be limited to cats, dogs, caged birds, laying hens or other pets as specifically approved in writing by the Committee.

(i) **Nuisances.** No noxious or offensive activity will be allowed on any Lot, nor will anything be done thereon which may become an annoyance or nuisance to the Subdivision.

(j) **Signs.** No signs, billboards, nor advertising structures may be erected or placed on any Lot or parts or portions thereof, except that a single sign, not more the 3'x 5' in size advertising a specific Lot for sale or house for rent or a construction sign may be displayed on a Lot. Declarant is exempt from the requirements of this Section, until all Lots in the Subdivision are sold.

(k) **Satellite Dishes/Antennas.** Satellite dishes and antennas must be placed so as to be obscured from public view and may not be placed in the setback areas of a Lot.

(l) **Dumping.** No trash, ashes, nor any other refuse may be dumped, or thrown, or otherwise disposed of on any Lot or any part or portion thereof. All dwellings must subscribe to city garbage disposal service.

(m) **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings will be used on any Lot at any time as a residence or for any other use, either temporary or permanently.

(n) **Accessory Dwelling.** Any detached accessory building erected on a Lot will conform in design and materials with the primary residential dwelling on the Lot, unless otherwise approved in writing by the Committee, and in accordance with the guidelines found in this Declaration. Any design and construction of accessory structures requires prior written approval by the Committee.

(o) **Fencing.** All fences within the Subdivision shall be constructed of vinyl, masonry materials or wrought iron. No fence, wall, hedge or other dividing structure shall be permitted on a Lot within the front yard setback. No dividing structure on any portion of the Lot shall be over six (6) feet in height. Chain-link fencing within the Subdivision shall not be allowed. All fences must conform to the City Code and also be approved in

writing by the Committee prior to installation. Lot Owners shall keep and maintain all perimeter fences on such Owner's Lot in good repair. However, the Association shall maintain as a Common Area Expense the portion of the fence within the Subdivision that faces and is adjacent to Highway 89. The portion of such fence that faces individual Lots shall be maintained by the Owner of each such Lot for the portion of such fence within such Owner's Lot.

(p) **Parking and Storage.** No inoperative automobile will be placed or remain on any Lot or adjacent street for more than forty-eight (48) hours. No commercial type vehicles and no trucks will be parked or stored within the front yard setback of any Lot, or within the side yard building setback on the street side of a corner Lot, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three-quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors and maintenance or commercial equipment of any kind will be parked or stored behind the front yard setback in an enclosed area screened from street view behind a fence six (6) feet in height. Temporary parking of recreational vehicles, travel trailers or trailers is permitted for loading and unloading purposes, not to exceed three (3) days when located within view of any public street or right-of-way. Sufficient side yard gate access should be planned and provided for in the design of the home. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited. Facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view.

(q) **Maintenance.** Every Lot, including the Improvements thereon, will be kept in good repair and maintained by the Owner in a clean, safe and attractive condition. Vacant Lots will be mowed no less than twice each growing season.

(r) **Design.** Each Lot will incorporate the following as part of their landscape and home design:

(i) A drainage plan that will include the contractor's acknowledgment and provisions on how each Lot will retain any and all surface drainage water during construction and occupancy.

(ii) Any asphalt or fiberglass shingles will be of architectural grade or better.

(iii) Any dehydration cooling system installed on a roof must be placed behind the roof line of any home so as not to be visible from the street in front of such Lot. Generators and any other mechanical equipment placed or installed on a Lot must be screened or otherwise placed upon the Lot so as not to be visible from the street in front of such Lot.

(iv) Landscape plans must be approved in writing by the Committee.

(s) **Landscaping.** Front yard landscaping of all Lots and side yard landscaping of corner Lots must be completed within six (6) months of an occupancy permit being granted by Mapleton City. Rear yard landscaping of all Lots and side yard landscaping of interior Lots must be completed within one (1) year of an occupancy permit being granted

by Mapleton City. Prior to the commencement of landscaping, the Owner must submit to and obtain the Committee's written approval of all proposed landscaping plans ("**Landscaping Plans**"). Landscaping Plans must show in sufficient detail the proposed landscaping to be completed. The landscaping will require at least 2-inch caliper trees and 5-gallon bushes or shrubs for any trees, bushes or shrubs included within the Landscaping Plans, unless otherwise approved by the Committee. The Committee reserves the right to ensure compliance with the approved Landscaping Plan. One 90-day extension may be granted due to weather. Landscaping of the park strip in front of each Lot will be provided by each Owner and will include trees and at least one of the following: grass, decorative rock and/or bark. The mechanical sprinkling system in an Owner's park strip shall be connected to the Owner's sprinkling system for the other portions of such Owner's Lot. Such trees in the park strip will be specified by the Committee and shall be spaced not more than thirty feet (30') apart and shall have a minimum caliper size of two inch (2") and will be a type of tree approved by the Committee that is readily available for purchase.

(t) **Driveways.** Driveways and the apron between the sidewalk and the street on all Lots must be of concrete or pavers approved by the Committee. Asphalt or gravel driveways are not permitted.

(u) **Common Areas.** "**Common Area**" and "**Common Areas**" shall mean and refer to all real property described and identified on a specific Plat as Common Area or Common Areas in which the Association owns an interest for the common use and benefit of some or all of the Owners of the Lots identified on such Plat, their successors, assigns, tenants, families, guests and invitees, including, but not limited to, the following items:

(i) All Common Areas designated as such on a specific Plat; and

(ii) All portions of the Property identified on a specific Plat that is not specifically included within the individual Lots identified on such Plat, such as the outdoor detention basins, test wells, public sidewalks, trails and landscaped parkways along Highway 89, that are not maintained by Mapleton City.

After the landscaped Improvements on any portion of the Common Areas are initially completed, the Association shall care for, maintain, repair and replace, as necessary, all landscaped portions of the Common Areas (which shall include the Highway 89 frontage landscaping within the Property). The costs and expenses to care for, maintain, repair and replace all landscaped areas that are cared for, maintained or repaired by the Association shall be Common Areas Expenses. The Association shall maintain, repair and replace, as needed from time to time, the Common Areas. The Association shall cause to be taken reasonable steps to clear ice and snow accumulations from all public sidewalks adjacent to open space parcels, detention basins and trails located within the Subdivision that are not within or adjacent to individual Lots and for which Mapleton City will not provide snow removal service. The Association shall have no duty or responsibility to clear ice and snow accumulations from any public sidewalks adjacent to individual Lots, or driveways, entry walkways, patios or other areas of individual Lots, and the Owner of each Lot shall be responsible to clean ice and snow accumulations from such areas on or adjacent to such Owner's Lot, including public sidewalks adjacent to such Owner's Lot.

(v) **Disclosure Regarding Soils.** Declarant hereby discloses to the Owners of all Lots within the Subdivision that soil has been imported and placed upon certain areas within the Subdivision in the process of development of the Subdivision. Prior to the construction by an Owner of a dwelling or any other Improvements on such Owner's Lot, the Owner of each Lot within the Subdivision shall obtain a geotechnical study report prepared and certified by a licensed and qualified independent geotechnical engineer, following such engineer's prior testing and analysis, regarding the condition of the soils on such Owner's Lot and regarding the location and placement of the footings and foundations for the dwelling and all other Improvements to be constructed on such Owner's Lot. The footings and foundations of the dwelling and all other Improvements to be constructed on a Lot shall be constructed by the Owner of such Lot in strict compliance with the plans, specifications and engineering designs prepared and certified by an independent geotechnical engineer following such engineer's comprehensive prior testing and analysis. In the process of seeking approval from the Committee for the construction of any dwelling or other Improvements on a Lot within the Subdivision, the Committee shall require that the Owner of such Lot submit to the Committee a copy of the geotechnical study report and the plans, specifications and engineering designs prepared and certified by an independent geotechnical engineer pertaining to the dwelling or other Improvements on such Owner's Lot for which such Owner is seeking approval from the Committee. Neither Declarant, the Association nor any of the Owners of any other Lots within the Subdivision shall have any liability of any nature to the Owner of a Lot for any damage to such Owner's Lot or to any Improvements of any nature constructed on such Lot, including without limitation the dwelling constructed on such Lot, or for any other similar claims of such Owner as a result of any settling, shifting, sliding or movement of the soils upon any portion of such Owner's Lot or upon any real property adjacent to such Owner's Lot. By accepting title to a Lot within the Subdivision, the Owner of such Lot shall be deemed to have specifically agreed that such Owner shall be solely responsible for any and all damages, costs, expenses and claims of any nature as the result of the settling, shifting, cracking, sliding or any other movement of any nature of the footings, foundation, floors, walls, windows, doors, driveways, garage floors, sidewalks, entryways, patios or any other portion of the dwelling or any other Improvements of any nature on such Lot caused by or due to the settlement, shifting, sliding or movement of any soils located on such Owner's Lot. By acquiring title to a Lot, each Owner shall be deemed to have accepted title to such Lot subject to the foregoing disclosures and disclaimers regarding the condition of the soils on such Owner's Lot, and each Owner shall be deemed to have waived and released any and all claims and causes of actions of any nature against Declarant, the Association and the Committee arising out of or associated with (i) the condition of the soils on such Owner's Lot, and/or (ii) the settlement, shifting, sliding or movement of any soils located on such Owner's Lot.

(w) **Wall Along State Road 89.** Some of the Lots within the Subdivision, whether in the first Phase or subsequent Phases of the Subdivision, may be located adjacent to State Road 89. Declarant shall have the right to install a wall along or near the boundaries of the Lots within the Subdivision that are adjacent to State Road 89 (the "**SR 89 Wall**"). If Declarant elects to construct the SR 89 Wall, Declarant shall have the right to select the design and the construction materials used for the SR 89 Wall. Declarant shall be responsible for the initial cost to install the SR 89 Wall. Declarant and the Association

shall have a perpetual easement to construct, install and maintain the SR 89 Wall upon and within all of the Lots within the Subdivision that are adjacent to SR 89. Following the initial construction of the SR 89 Wall, all of the costs and expenses to maintain, repair and replace, if necessary, the SR 89 Wall shall be Common Area Expenses, and the Association shall at all times maintain, repair and replace, as necessary, both sides of the SR 89 Wall, even if all or a portion of the SR 89 Wall is located within the boundaries of any of the Lots within the Subdivision.

(x) **Public Pedestrian Trail.** In connection with the construction and development of the Subdivision, the City may require that either Declarant or the Association construct and install public pedestrian trails (the “**Pedestrian Trails**”) upon and within certain pedestrian trail easements, as identified on the Plat. The Pedestrian Trails may be owned by either the City or the Association. If the City requires the Association to maintain, repair and replace from time to time the Pedestrian Trails, then all the costs and expenses incurred by the Association to maintain, repair and replace the Pedestrian Trails shall be deemed to be Common Area Expenses. Even if the City does not obligate the Association to maintain, repair and replace the Pedestrian Trails, if the Board of Directors of the Association determines that the City’s efforts to maintain, repair and replace the Pedestrian Trails within the Subdivision, are inadequate and unsatisfactory, then the Board of Directors of the Association may elect to maintain, repair and replace from time to time the Pedestrian Trails within the Subdivision. All costs and expenses incurred by the Association to maintain, repair and replace the Pedestrian Trails, whether pursuant to an obligation imposed by the City or pursuant to an election to do so by the Board of Directors, shall be deemed to be Common Area Expenses.

2. NEW BUILDING AND PROCEDURE.

To maintain a degree of protection to the investment which Owners in the Subdivision may make, homes of superior design are requisite. Designs will be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

(a) **Soils and Geotechnical Reports.** Prior to commencement of construction, each Owner will retain a qualified Geotechnical Soils Engineer to approve soils condition and deem soil suitable for the proposed construction. Any issues relating to water table and soils conditions on each Lot will be the sole responsibility of the Lot Owner, and the Owner’s plans must comply with and address any recommendations set forth in the geotechnical report.

(b) **Preliminary Plans.** Preliminary plans (“**Preliminary Plans**”) must be submitted for approval and acceptance by the Committee before construction or renovation is commenced. The preliminary drawings must include at a minimum the following:

- (i) Plot plan to scale of the entire Lot with buildings located and elevation of floors shown above or below a designated point on the street.
- (ii) Floor plans of each floor level to scale.

(iii) Elevations to scale of all sides of the house.

(iv) Specifications of all outside materials to be used on the exterior of the residence, including product and color selections.

(c) **Working Drawings.** Working drawings (“**Working Drawings**”) must be submitted for written approval and accepted by the Committee before construction or renovation is commenced. The Working Drawings must include at a minimum the following:

(i) Plot plans to scale showing the entire Lot, dwellings, structures, garages, out buildings or structures, walks, drives, fences, carriage lights, retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the structures and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

(ii) Detailed floor plans.

(iii) Detailed elevations, indicating all materials and showing existing and finished grades.

(iv) Detailed sections, cross and longitudinal.

(v) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

(vi) Specifications must give complete descriptions of materials to be used with notations of the colors of all materials to be used on the exterior of the dwelling.

(d) **Final Plans.** After review and approval of the Preliminary Plans and Working Drawings and before construction is commenced, final plans addressing any concerns or comments from the Committee (“**Final Plans**”) must be submitted to the Committee for final review and approval.

(e) **Review Fee.** The Committee shall have the right to require the payment to the Committee by the Owner of each Lot of a review fee (the “**Review Fee**”) in the amount of \$250 in connection with the review by the Committee of the Preliminary Plans, the Working Drawings and the Final Plans submitted to the Committee for review and approval by such Owner. The Committee, in its sole discretion, may elect to waive or reduce the amount of the Review Fee to be paid by the Owner of a Lot in connection with the review and approval by the Committee of the Preliminary Plans, the Working Drawings and the Final Plans submitted to the Committee by such Owner.

3. **ARCHITECTURE AND LANDSCAPE REVIEW COMMITTEE.**

(a) During the Period of Declarant Control, the members of the Committee shall be individuals, who do not need to be Owners, who are designated from time to time

by Declarant. Following the expiration of the Period of Declarant Control, the members of the Committee shall consist of Owners designated by a majority vote of the members of the Board of Directors of the Association. The Committee will consist of three (3) members, the majority of which will constitute a quorum, and the concurrence of the majority will be necessary to carry out the provisions applicable to the Committee.

(b) It is understood that the Committee members will serve without pay and are to give of their time as a public service to the Subdivision. Therefore, any liability incurred due to an oversight or implied mistake that might arise due to the action or inaction of the Committee or any of its members while carrying out the functions of the Committee will be exempt from any civil claims brought by any Lot Owner. Therefore, except to the extent caused by a Committee member's gross negligence or willful misconduct, Committee members will be held harmless by the Association from any action and exempt from any civil recourse either intended or implied to any of the Committee members while serving on the Committee, or for the judgments that they may render during the course of their service. In the event any Lot Owner commences a legal proceeding against the Committee or otherwise seeks to invalidate any of these provisions, or in the event the Committee is required to bring a legal action to enforce these provisions against a Lot Owner, the prevailing party will be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs incurred in such legal action by the successful party..

4. ARCHITECTURE AND LANDSCAPE REVIEW COMMITTEE PROCEDURE.

(a) The affirmative vote of a majority of the Committee members will govern its actions and be the act of the Committee. The Committee may approve or disapprove in its sole discretion:

- (i) Preliminary Plans;
- (ii) Working Drawings;
- (iii) Final Plans;
- (iv) Landscaping Plans; and
- (v) Planning problems or complaints by Owners.

(b) The Committee will act within ten (10) business days of receipt on any submittal and maintain minutes of its action in writing to be held as a permanent record. The submittals will be delivered to the Committee, which will approve or disapprove the submittals within ten (10) business days, and the Committee shall notify the Owner in writing of the action taken or the decision made by the Committee. It is the Owner's responsibility to ensure verification of delivery to the Committee for purposes of determining any response deadline provided herein. An Owner whose plans are disapproved will meet with the Committee at the Committee's invitation where she or he will be informed of the nature of the cause of the action so that she or he can take the steps necessary toward obtaining approval of her or his plans. Finally, the Committee has the

authority to evaluate building plans, materials, fences, landscaping, etc., based on standards and criteria it feels are in the best interests of the entire Subdivision. These will include, but not be limited to aesthetics, reasonable protection of views, permanence of materials, etc. All decisions of the Committee will be final.

(c) Any approval of the Committee authorized or required under this Declaration is entirely different than and separate from any building permit or other permit or approval that may be required under City Code or by any other governmental entity. Any and all necessary building permits and approvals must be obtained prior to the commencement of construction or work. Notwithstanding any other provision in this Declaration or in the Mapleton Heights Design Guidelines established from time to time by the Board for the Subdivision (the “**Design Guidelines**”), the Committee shall not be responsible for (a) determining that the construction if any improvements within the subdivision or the related 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.

(d) In its review and consideration of an Owner’s design review application, the Committee shall evaluate, among other things: (a) the materials to be used on the exterior of the structure; (b) exterior colors; (c) harmony of architectural elements and design with other structures within the Subdivision; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of landscaping with the Lot and with the neighboring Lots and with the Design Guidelines; (g) impact of lighting (interior and exterior) on night skies and neighboring Lots; and (h) consistency of all of the foregoing with the Design Guidelines. Each Owner acknowledges, by taking title to a Lot, that all determinations and decisions the Committee are subject to the sole discretion of the members of the Committee.

5. HOMEOWNERS ASSOCIATION.

(a) **Association.** A homeowners association in the form of a Utah nonprofit corporation (the “**Association**”) will be organized by Declarant to exercise the rights, powers and duties set forth in this Declaration. Declarant shall name the Association “MAPLETON HEIGHTS OWNERS ASSOCIATION.” The Association shall have the right and duty to administer and enforce all of the terms and conditions of this Declaration and to exercise the rights, powers and duties set forth in this Declaration, the Articles of Incorporation, the Bylaws of the Association, the Design Guidelines and the rules and regulations of the Association adopted by the Association (through its Board) pursuant to Section 31(e) of this Declaration (collectively referred to herein as the “**Governing Documents**”). The Association shall also have the rights, powers and authority of a homeowners association set forth in Chapter 8a of Title 57 of the Utah Code. Pursuant to Section 57-8a-208 of the Utah Code, as it may be amended from time to time, the Association shall have the right to assess Fines against an Owner, as defined and as

provided in Section 31(e) of this Declaration, for the violations of rules or provisions of the Association's Governing Documents. Each Owner will pay a monthly fee ("Assessment") in the amount set by the Board, which will be used for maintenance of any Common Areas within the Subdivision.

(b) **Board of Directors and Officers.** The affairs of the Association will be conducted by a Board of at least three (3) and no more than five (5) directors and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws established for the Association by Declarant, as the same may be amended from time to time. Attached to this Declaration as **Exhibit D** is a copy of the Bylaws of the Association. The initial Board will be composed of three (3) directors appointed by Declarant, which initial Board will be controlled by Declarant until the expiration of the Period of Declarant Control. At the first meeting after the expiration of the Period of Declarant Control, five members of the Board will be elected by the Owners. Three (3) members of the Board initially elected by the Owners will be elected for two-year terms, and two (2) members of the Board initially elected by the Owners will be elected for a one-year term. Thereafter, all members of the Board will be elected for two-year terms. The Board may also appoint various committees and may appoint a Manager who will, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board will determine the compensation, if any, to be paid to the Manager. The Board's responsibilities will include, but not be limited to, the following:

- (i) administration;
- (ii) preparing and administering an operational Budget;
- (iii) scheduling and conducting the annual meeting and other meetings of the Members;
- (iv) collecting and enforcing the Assessments;
- (v) accounting functions and maintaining records;
- (vi) promulgation and enforcement of any rules adopted by Declarant or the Association;
- (vii) maintenance of any Common Areas within the Subdivision; and
- (viii) all the other duties imposed upon the Board pursuant to this Declaration, including the enforcement thereof.

(c) **Membership.** Every Owner, upon acquiring title to a Lot, will automatically become a member of the Association and will remain a member thereof until the time as that ownership ceases for any reason, at which time the membership in the Association with respect to that Lot, will automatically cease, and the successor Owner will become a member. Membership in the Association will be mandatory and will be appurtenant to each Lot.

(d) **Classes of Membership and Voting Allocations.** The Association shall have two (2) classes of membership—Class A and Class B, described more particularly as follows:

(i) **Class A.** Class A Members shall be all Owners with the exception of the Class B members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(A) One Vote. Each Lot shall have one (1) vote.

(B) Subject to Assessment. No vote shall be cast or counted for any Lot not subject to Assessment;

(C) Multiple Owners. When more than one (1) Person or entity holds an ownership interest in a Lot, the vote for such Lot shall be exercised by those Persons or entities as they themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) Person or entity seeks to exercise it.

(D) Leased Lot. An Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(ii) **Class B.** The Class B Member shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership shall terminate, and Class B membership shall convert to Class A Membership upon the happening of the earlier of the following (herein referred to as the “**Event**” or “**Events**”):

(A) Lots Sold. Four (4) months after one hundred percent (100%) of the Lots have been sold within the Project; or

(B) Twenty Years. Twenty (20) years from the recording of this Declaration in the Office of the Recorder of Utah County, Utah; or

(C) Election. When, in its sole discretion, Declarant so determines. If and when Declarant elects to relinquish control of the Association, Declarant shall send written notification to each Owner of the effective date of the relinquishment or transition (the “**Transition Date**”) at least fifteen (15) days prior thereto. Thereupon, the Board shall call a special meeting to elect the members of the Board of Directors to take office as of the Transition Date.

From and after the happening of the first to occur of the Events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. The period of time commencing upon the execution of this Declaration by Declarant and ending upon the happening of the first to occur of the Events shall be referred to in this Declaration as the “**Class B Control Period**” or the “**Period of Declarant Control.**”

(e) **List of Owners Eligible Mortgagees, and Eligible Insurers of Guarantors.** The Board of Directors shall maintain up-to-date records showing: a) the name of each Person who is an Owner, the address of such Person, and the Lot which is owned by such Owner; b) the name of each Person or entity who is an Eligible Mortgagee, the address of such Person or entity, and the Lot which is encumbered by the Mortgage held by such Person or entity; and c) the name of each Person or entity who is an Eligible Mortgagee or Eligible Insurer or guarantor, the address of such Person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such Person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the Office of the Recorder of Utah County, Utah. The Board of Directors may for all purposes act and rely on the information concerning Lot ownership in its records or, at the option of the Board of Directors, the records of the Recorder of Utah County, Utah. The address of any Owner shall be deemed to be the address of the Lot owned by such Person, unless the Board of Directors is otherwise advised in writing.

(f) **Place of Meeting.** Meetings of the Association will be held at a suitable place convenient to Owners as may be designated by the Secretary of the Association in a notice therefor.

(g) **Annual Meetings.** Annual meetings of the Association will be held in each year beginning in the year 2021 on the month, day and time as is set forth in the notice therefor; provided, that after the first annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the Association to be more convenient. At the annual meetings there will be elected Directors of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports will also be presented at the meetings as well as other business of the Association properly placed before each meeting.

(h) **Special Meetings.** The President will call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business will be transacted at a special meeting except as stated in the notice therefore unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

(i) **Common Areas Expenses.** Each Owner, upon receipt of a deed to a Lot, shall pay his Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be

obligated to pay Assessments until such time as the Declarant elects in writing to commence payment, whichever first occurs.

(j) **Purpose of Common Areas Assessments.** The “**Common Areas Assessments**” provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

(k) **Creation of Common Areas Assessments.** The Common Areas Assessments shall pay for the Common Areas Expenses of the Association as may be from time to time specifically authorized by the Board of Directors. Each Owner, by acceptance of a deed for a Lot within the Project, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

(l) **Budget.** Not less than ten (10) days or more than thirty (30) days prior to the annual Owners’ meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget (the “**Budget**”) which:

(i) **Itemization.** Shall set forth an itemization of the anticipated Common Areas Expenses and Common Areas Assessments for the twelve (12) month calendar year, commencing with the following January 1.

(ii) **Basis.** Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting assessments, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration (collectively referred to herein as “**Common Areas Expenses**”). To the extent that the Mapleton Heights Annexation and Development Agreement dated September 3, 2015 between Mapleton Heights, LLC and Mapleton City Corporation (the “**Development Agreement**”) imposes any duty or obligation for the maintenance, repair or replacement of any portion of the Common Areas within the Subdivision owned by the Association, then all such costs and expenses incurred by the Association to comply with the requirements of the Development Agreement shall be deemed to be Common Areas Expenses.

(m) **Uniform Rate of Common Areas Assessments.** Except as provided in Section 5(q) pertaining to the payment of Common Area Assessments by Declarant, the annual Common Areas Assessments shall be allocated to the Owners equally and may be collected on an annual, semi-annual, quarterly or monthly basis, as determined by the Board of Directors.

(n) **Approval of Budget and Common Areas Assessments.** The proposed Budget and the Common Areas Assessments shall become effective unless disapproved at the annual Owners' meeting by a vote of at least a Majority of the Owners or unless disapproved by a vote of at least a Majority of the Owners at a special meeting called for that purpose within forty-five (45) days after the date of the meeting at which the Board of Directors presented the proposed Budget to the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed Budget and Common Areas Assessments or the Board of Directors fails for any reason to establish the Budget and Common Areas Assessments for the succeeding year, then and until such time as a new Budget and new Common Areas Assessment schedule shall have been established, the Budget and the Common Areas Assessments that the Board of Directors last adopted that was not disapproved by at least a Majority of the Owners shall continue as the Budget until and unless the Board of Directors presents another Budget to the Owners and that Budget is not disapproved. Notwithstanding any other provision of this Declaration to the contrary, during the Class B Control Period the Owners may not disapprove a Budget, as provided in Section 57-8a-215(5) of the Utah Code.

(o) **Payment of Common Areas Assessments.** The Board of Directors has the sole authority and discretion to determine how and when the annual Common Areas Assessments are paid. The dates and manner of payment of the Common Areas Assessment shall be determined by the Board of Directors.

(p) **Personal Obligation of Owner.** Owners are liable to pay all Assessments, fines, accruing interest, late fees and collection costs, including without limitation attorneys' fees, assessed by the Association pursuant to the terms of this Declaration, including without limitation all such amounts arising from the failure of an Owner to abide by the terms of this Declaration or any other Governing Documents. However, no Mortgagee or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the Mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "**Owner**" shall mean and refer jointly and severally to: (i) the Owner of both the legal and equitable interest in any Lot, (ii) the owner of record in the Office of the Recorder of Utah County, Utah, and (iii) both the Buyer and Seller under any executory sales contract or other similar instrument.

(q) **Payment of Assessments by Declarant.** Notwithstanding any other provision in this Declaration to the contrary, Declarant shall not be obligated to pay Assessments with respect to any Lot owned by Declarant until such time as a residential structure upon any such Lot owned by Declarant has been constructed and is substantially complete and a permanent certificate of occupancy has been issued by the City with respect

to such residential structure on Declarant's Lot. At the election of Declarant, in Declarant's sole discretion, Declarant may elect to subsidize (the "**Subsidy Agreement**") the payment by the Association of Common Area Expenses on the following terms by delivering to the Association a written election to subsidize executed by Declarant, which Subsidy Agreement Declarant may elect to terminate at any time in Declarant's sole discretion.

(i) In lieu of paying Assessments, and so long as the Subsidy Agreement is in effect, Declarant shall subsidize the Association for the amount by which the cost of operating and administering the Association exceeds the total amount of Assessments levied against the Lots within the Subdivision owned by Owners other than Declarant. The total amount paid by Declarant as a subsidy shall not exceed the amount Declarant would have otherwise paid as Assessments levied against the Lots owned by Declarant.

(ii) The subsidy shall be in the form of cash payments.

(iii) Declarant shall make payments in respect of its subsidy obligations under this Section 5(q) at such times as the Board of Directors may reasonably request from time to time (but shall not be required to make such payments more often than monthly).

(iv) At the end of each fiscal year of the Association, either:
 (a) Declarant shall pay to the Association such additional funds as may be necessary, when added to all other funds paid by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Section 5(q) for such fiscal year; or
 (b) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments paid by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Section 5(q).

(r) **Dates and Manner of Payments.** The dates and manner of payment of all Assessments shall be determined by the Board of Directors.

(s) **Reserve Accounts.** The Board of Directors shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for capital improvements (known as the Reserve Fund discussed more fully below). The reserve accounts shall be funded out of Assessments (as reasonably determined by the Board of Directors).

(t) **Acceleration.** Common Areas Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Areas Assessment for delinquent Owners. If, however, the Common Areas Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

(u) **Statement of Assessments Due.** Upon written request, the Board of Directors shall furnish to any Owner a statement of any Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed Ten Dollars (\$10.00) for the issuance of such certificate.

(v) **Superiority of Assessments.** All Common Areas Assessments and all other Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

(w) **Termination of Delinquent Owner's Rights.** Provided that the Board of Directors complies with the requirements of Section 57-8a-309 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time, the Board of Directors may terminate an Owner's right to receive a utility service for which the Owner pays as a Common Areas Expense through such Owner's Common Areas Assessments and also an Owner's right of access to and use of any recreational facilities within the Project, if an Owner is delinquent in the payment of any Assessments payable by such Owner.

(x) **Suspension of Right to Vote for Non-Payment.** At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of any Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(y) **Failure to Assess.** The omission or failure of the Board of Directors to fix the Common Areas Assessment amounts or rates or to deliver or mail to each Owner a Common Areas Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Common Areas Assessments or any other Assessments. In such event, each Owner shall continue to pay annual Common Areas Assessments on the same basis as for the last year for which a Common Areas Assessment was made until a new Common Areas Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

(z) **Re-assessments.** The Board may exercise its business judgment and if, because of bankruptcies and/or foreclosures, the charge-offs and delinquencies in any given year create too great a shortfall in the operating account and budget, then the Board, rather than deplete the contingency reserve account, may elect to reassess among all of the Owners based upon their percentages of ownership interest an amount equal to the total of unpaid or uncollected assessments. Owners shall be given at least thirty (30) days written notice of any such reassessment.

(aa) **Reserve Fund.** The Board shall cause the Association to establish and maintain an adequate and reasonable Reserve Fund for maintenance, repairs and replacement of the Common Areas that are to be maintained by the Association that must be replaced on a periodic basis, and such reserves shall be funded from the Common Areas Assessments (in amounts to be reasonably determined by the Board in accordance with the

terms hereof and applicable law). The Reserve Fund shall be maintained by the Association in a bank account separate from the bank account maintained by the Association for the other funds of the Association. Within the Reserve Fund, the Association shall maintain a separate account designated and intended solely for the repair, maintenance and replacement from time to time of the private roads located within the Project, which shall be funded from the Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). Pursuant to Section 57-8a-211 of the Utah Code, as may be amended from time to time, the Board shall cause a Reserve Fund analysis to be conducted no less frequently than every six (6) years. After the initial Reserve Fund analysis is conducted, the Board shall review and, if necessary, update a previously conducted Reserve Fund analysis no less frequently than every three (3) years. The Board may conduct a Reserve Fund analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the Reserve Fund analysis. The Board may not use money in the Reserve Fund for daily maintenance expenses, or for any purpose other than the purpose for which the Reserve Fund was established, unless a majority of the Members vote to approve the use of the Reserve Fund money for that purpose. The Board shall maintain the Reserve Fund separately from other funds of the Association. The foregoing may not be construed to limit the Board from prudently investing money in the Reserve Fund, subject to any investment constraints imposed by the Articles of Incorporation or the Bylaws of the Association. The Association shall: (a) annually provide to the Owners a summary of the most recent Reserve Fund analysis or update, and (b) provide a copy of the complete Reserve Fund analysis or update to any Owner who requests a copy. In formulating the Association Budget each year, the Board shall include a Reserve Fund line item in an amount the Board determines, based on the Reserve Fund analysis, to be prudent. Within forty-five (45) days after the day on which the Association adopts the Association's annual Budget, the Owners may veto the Reserve Fund line item by a fifty-one percent (51%) vote of the allocated voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto the Reserve Fund line item. If the Owners veto a Reserve Fund line item as provided in the previous sentence, and a Reserve Fund line item exists in a previously approved annual Budget of the Association that was not vetoed, the Association shall fund the Reserve Fund account in accordance with that prior Reserve Fund line item.

6. SPECIAL ASSESSMENTS.

In addition to the other Assessments authorized herein, the Association may levy special assessments (“**Special Assessments**”) in any year, subject to the following:

(a) **Board of Directors Based Assessment.** So long as the Special Assessment does not exceed the sum of One Hundred Dollars (\$100.00) (the “**Special Assessment Limit**”) per Lot in any one fiscal year, the Board of Directors may impose the Special Assessment without any additional approval.

(b) **Association Approval.** Any Special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a Majority of the Members of the Association. The Board of Directors in its discretion may allow any Special Assessment to be paid in installments.

7. SPECIFIC ASSESSMENTS.

The Board of Directors shall also have the power specifically to assess the Owners in a particular area pursuant to this Section (“**Specific Assessment**”) as, in its discretion, it shall deem necessary or appropriate, subject to the following:

(a) **No Obligation or Waiver.** Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director’s right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

(b) **Enabling Power.** The Board of Directors may specifically assess an Owner in a particular area in the manner set forth below; provided, however, the Specific Assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration, and the Owner has the choice to accept or reject the benefit:

(i) If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the Specific Assessment shall be equitably apportioned among those Lots according to the benefit received.

(ii) If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the Specific Assessment shall be equitably apportioned among all Lots according to the benefit received.

8. INDIVIDUAL ASSESSMENTS.

Individual assessments (“**Individual Assessments**”) shall be levied by the Board of Directors against a Lot and its Owner to reimburse the Association for:

(a) fines levied and costs incurred in enforcing this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association (collectively referred to herein as the “**Project Documents**”);

(b) costs associated with the maintenance, repair or replacement of that for which the Owner is responsible;

(c) any other charge, fee, dues, expense, or cost designated as an Individual Assessment in the Project Documents; and

(d) attorneys’ fees, interest, and other charges relating thereto as provided in this Declaration.

9. REINVESTMENT FEE.

For purposes of this Section 9, the term “**Reinvestment Fee**” shall mean the charge which may be levied and assessed by the Association in the event of a Transfer of a Lot, pursuant to this

Section 9. The Reinvestment Fee assessed, if any, shall be in compliance with Section 57-1-46 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time, and the Reinvestment Fee may be used by the Association for any purpose authorized by the Utah Code. Subject to the terms and conditions of Section 9(b) below, the Board of Directors shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 9. If established by the Board of Directors, the following terms and conditions shall govern Reinvestment Fees:

(a) Upon the occurrence of any sale, transfer or conveyance (as applicable, a “**Transfer**”) of any Lot, the party receiving title to the Lot (the “**Transferee**”) shall pay to the Association a “Reinvestment Fee” in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (a) one-half percent (0.5%) of the value of the applicable Lot (including improvements, if any), or (b) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 9, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(i) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(ii) Any Transfer to the Association or its successors.

(iii) Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor’s relatives, but only if the consideration for the Transfer is no greater than ten percent (10%) of the value of the Lot transferred.

(iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a site by the estate of an Owner.

(v) Any Transfer made by a Person owning a Lot or portion thereof to a legal entity or trust owned or controlled by the Transferor.

(vi) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing title defects or encumbrances affecting the title to such Lot, or granting easements, rights of way or licenses, and any exchange of Lots between Declarant and any original purchaser from Declarant of the one or more Lots being Transferred to Declarant in such exchange.

(vii) Any lease of any Lot or portion thereof for a period of less than thirty (30) years

(viii) Any Transfer to secure a debt or other obligation or to release any Lot that is encumbered as security for a debt or other obligation.

(ix) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

10. COLLECTION OF ASSESSMENTS.

All Assessments must be paid in a timely manner and shall be collected as follows:

(a) **Time is of the Essence.** Time is of the essence, and all Assessments shall be paid promptly when due.

(b) **Delinquent Assessments.** Any Assessments which are not paid when due are delinquent (“**Delinquent Assessments**”) and shall constitute a lien against the Lot affected, which lien shall attach automatically, regardless of whether a notice of lien is recorded.

(c) **Late Assessment and Accruing Interest.** Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late charge or waive the late charge and accruing interest but is not required to do so.

(d) **Notice of Delinquency.** The Association shall give a notice of delinquency to any Owner who has not paid his Assessments in a timely manner.

(e) **Notice of Lien.** If any Assessment in a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorneys’ fees, the cost of a foreclosure or abstractor’s report, and any other Additional Charges permitted by law should be filed with the County Recorder, then the lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association’s attorney, manager, Board of Directors member or other designated agent.

(f) **Foreclosure of Lien and/or Collection Action.** If any Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien.

(g) **Personal Obligation.** Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her or such entity personally for the collection of the Assessment as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, deeds of trust or encumbrances may be foreclosed.

(h) **No Waiver.** No Owner may waive or otherwise exempt himself or herself or itself from liability for the Assessments provided for herein by the non-use of Common Areas or by the abandonment of his Lot.

(i) **Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of

Directors to take some action or to perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with an order or directive of any municipal or other governmental authority. The obligation to pay Assessments shall be a separate and independent covenant on the part of each Owner.

(j) **Application of Payments.** All payments shall be applied as follows: Additional Charges, Delinquent Assessments and current Assessments.

(k) **Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report and reasonable attorneys' fees. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(l) **Appointment of Trustee.** Declarant hereby conveys and warrants, pursuant to Sections 57-1-20 and 57-8a-302 of the Utah Code, to Utah First Title Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, all of the Lots within the Project and all of the improvements to the Lots within the Project for the purpose of securing payment of all of the Assessments under the terms of this Declaration. Each Owner, by accepting a deed to the Lot, also hereby conveys and warrants to Utah First Title Agency, Inc., a Utah corporation, as trustee, with power of sale, each Lot acquired by such Owner and all of the improvements thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth herein.

(m) **Attorney in Fact.** To the extent not prohibited by the Utah Community Association Act set forth in Section 57-8a-10, *et seq.* of the Utah Code, as amended, supplemented or replaced from time to time, each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any Person renting his Lot, if the Lot is rented and if the Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the renter, against rent due, for the amount of money paid to the Association.

11. LIABILITY OF BOARD OF DIRECTORS AND MEMBERS OF THE COMMITTEE.

The Association shall indemnify every officer and member of the Board of Directors and every member of the Committee against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board of Directors or member of the Committee in connection with any action, suit, or other proceeding

(including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or member of the Board of Directors or a member of the Committee. The officers and members of the Board of Directors and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and hold harmless each such officer and member of the Board of Directors and every member of the Committee from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors or former member of the Committee, or former officer or member of the Board of Directors or member of the Committee, may be entitled. The Association shall, as a Common Areas Expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

12. INSURANCE.

The Board of Directors shall at all times purchase, maintain in force, and pay the premium for insurance on all Buildings and all Common Areas within the Project satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time (the "**Statutory Insurance Requirements**") and to the extent not contrary to nor inconsistent with the Statutory Insurance Requirements, satisfying at least the following requirements:

(a) **Fire and Extended Coverage.** The Board of Directors shall have the authority to and shall obtain insurance for all Buildings, and also for all structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that are sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision, and (ii) that are not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

(i) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;

(ii) have a deductible amount in a reasonable amount approved by the Board of Directors;

(iii) be paid for by the Association through annual assessments of the Owners; and

(iv) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners.

(b) **Liability Insurance.** The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Common Areas, public ways, and any other areas under the Association's supervision, insuring the Association, the directors of the Board, and the members of the Committee, with such limits as the Board may determine, but not less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) one million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.

(c) **Fidelity Coverage.** The Board shall obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of members of the Board of Directors, managers, trustees, employees, agents, volunteers and members of the Committee responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three (3) months' assessments on all Lots, and (ii) the maximum amount that will be in the custody of the Association or the Manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage not less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

(d) **Hazard Insurance Carrier.** Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in

Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

(e) **Other Association Insurance.** In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

(f) **Insurance Representative: Power of Attorney.** There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land, and is coupled with an interest.

(g) **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

(h) **Worker's Compensation and Employer's Liability Insurance.** The Board shall acquire workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(i) **Directors and Officers Liability.** The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association and of the members of the Committee from personal liability in the management of the Association's affairs.

13. CONSENT IN LIEU OF VOTE.

In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

(a) **Ninety-Day Limit.** All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained.

(b) **Changes in Owners.** Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purposes.

14. MORTGAGEE PROTECTION.

The lien or claim against a Lot for unpaid Assessments levied by the Board of Directors or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

(a) **Effects of Voluntary and Involuntary Sale.** The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot from the lien of any Assessments becoming due thereafter.

(b) **Books and Records Available for Inspection.** The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any mortgage, current copies of the Declaration, Bylaws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) **Right to Financial Statement.** The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) **Management Contracts.** Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby

that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other party thereto.

(e) **Eligible Mortgagee Designation.** Upon written request to the Board of Directors or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an “**Eligible Mortgagee**” or “**Eligible Insurer**,” as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(i) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer or guarantor.

(ii) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed for such Eligible Mortgagee or Eligible Insurer or guarantor, which delinquency remains uncured for a period of sixty (60) days.

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

(iv) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

15. AMENDMENT.

(a) **By Owners.** Except as provided elsewhere in this Declaration, the affirmative vote of at least a Majority of the Owners shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

(b) **By Declarant.** Until the expiration of the Period of Declarant Control, Declarant may unilaterally amend this Declaration or the Plat in any manner and for any purpose that Declarant deems to be in the best interest of the Project. By acquiring title to a Lot within the Project, the Owner of each Lot within the Project shall be deemed, as a matter of law, to have approved and consented to all amendments to this Declaration and to all amendments to the Plat unilaterally made by Declarant during the Period of Declarant Control. In the event that the City or the Recorder of Utah County requires written evidence of the approval by the Owners of Lots within the Project to any amendment to this Declaration or to the Plat unilaterally made by Declarant during the Period of Declarant

Control, then the Owner of each Lot within the Project at the time of any such amendment to this Declaration or to the Plat shall be obligated to execute a document requested by Declarant evidencing the consent and approval by such Owner to such amendment to this Declaration or to the Plat. By acquiring title to a Lot within the Project, the Owner of each such Lot shall be deemed to have granted to Declarant a special power of attorney authorizing Declarant to execute on behalf of each Owner of each Lot within the Project any and all amendments to this Declaration or to the Plat made by Declarant during the Period of Declarant Control.

16. NOTICE AND HEARING.

If an Owner or resident is charged with a material violation of the Project Documents, then:

(a) **Notice.** Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board of Directors shall be given to the Member at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board of Directors for the purpose of service of notice or to the address of the Member's Lot if no other address has been provided. Any address may be changed from time to time by a Member giving written notice to the Board of Directors.

(b) **Costs and Assessments.** If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board of Directors may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board of Directors finds that a violation has occurred.

(c) **Final Determination.** After the hearing has taken place, the Board of Directors shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board of Directors shall be final. However, nothing herein shall be construed to prevent the Board of Directors from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and an opportunity for a hearing.

17. DECLARANT'S RIGHTS ASSIGNABLE.

All of the rights of Declarant under this Document may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage covering all Lots in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

18. CERTAIN PROVISIONS APPLICABLE TO DECLARANT.

Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

(a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

(b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of one (1) or more Lots; provided, however, that the obligation to acquire said written consent of Declarant shall cease on the happening of the earlier to occur of the Events.

19. INTERPRETATION.

To the extent Utah law is consistent with the Project Documents, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of the Project Documents are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The unenforceability or invalidity of any portion of the Project Documents shall not affect the validity or enforceability of the remainder hereof.

20. COVENANTS TO RUN WITH LAND.

This Declaration and all the provisions hereof shall constitute covenants that run with the Land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of the Project Documents and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of the Project Documents.

21. ENFORCEMENT AND RIGHT TO RECOVER ATTORNEYS' ASSESSMENTS.

The Association, or the Board of Directors may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, or the Board of Directors be required to take action to enforce the Project Documents, or to pursue any remedy

provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including reasonable attorneys' fees, which may arise or accrue.

22. PRE-LITIGATION REQUIREMENTS.

Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant or the individual managers, owners, members or officers of Declarant, unless and until all of the following requirements have been satisfied:

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "**Litigation Budget**");

(b) A copy of the opinion letter described in subsection 22(a) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 22(a) above.

The purposes of these requirements include the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the members of the Association financially and otherwise.

If any claims or actions falling within the scope of this Section 22 are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 22, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. For purposes of clarity, this Section 22 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any annual assessments, special assessments, or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section 22

apply to claims or actions that individual Owners may file relating solely to their own Lots. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

23. SECURITY.

The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither Declarant, the Association nor the Board of Directors shall in any way be considered insurers or guarantors of security within the Project, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, as well as their guests, where applicable, acknowledge by taking occupancy of a Lot or entering the Project that neither Declarant, the Association nor the Board of Directors represent or warrant that any security measures undertaken will insure their safety, and further acknowledge that neither Declarant, the Association nor the Board of Directors are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither Declarant, the Association nor the Board of Directors have made any representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty of merchantability.

24. AGENT FOR SERVICE.

The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the Office of the Utah Department of Commerce.

25. EFFECTIVE DATE.

This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the Office of the Recorder of Utah County, Utah.

26. ADDITIONAL LAND/RIGHT TO EXPAND AND STATE OF TITLE TO NEW LOTS.

There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option, in Declarant's sole discretion, to expand the Project at any time and as often as Declarant may elect (within the limits herein prescribed) by adding to the Project the Additional Land or a portion or portions thereof. The Additional Land that Declarant may add to the Project, in Declarant's sole discretion, shall not be limited to the parcels of real property described on the attached **Exhibit C**, and Declarant may acquire other parcels of real property located adjacent to or in the vicinity of the Property, which Declarant may, in Declarant's sole discretion, elect to identify as part of the Additional Land. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner or Mortgagee) other than the owner of such portion of the Additional Land that is to be added to the Project, and Declarant's right and option to add to the Project Additional Land shall be limited only as specifically provided in this

Declaration. Any specifically described portion of the Additional Land shall be deemed added to the Project when a supplemental declaration and amendment to this Declaration containing the information required by Section 28 below has been Recorded with respect to the portion of the Additional Land concerned. After the date such a supplemental declaration and amendment to the Declaration is recorded, title to each Lot thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Common Areas shall be vested in and held by the Owner of such Lot, and none of the other Owners or the Association shall have any claim or title to or interest in such Lot or its appurtenant right and easement of use and enjoyment to the Common Areas.

27. RIGHTS AND STATEMENTS RESPECTING ADDITIONAL LAND.

Declarant hereby furnishes the following information and statement respecting the Additional Land and Declarant's right and option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof.

(a) All of the Additional Land need not be added to the Project, if any of such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time.

(b) There are no limitations or requirements relative to the size, location or configuration of any given portion of the Additional Land which may be added to the Project or relative to the order in which particular portions of the Additional Land may be added to the Project. Future improvements on the Additional Land added to the Project shall be subject to compliance with this Declaration.

28. PROCEDURE FOR EXPANSION.

Each supplemental declaration and amendment to this Declaration by which an addition to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant and by the Owner of such portion of the Additional Land, shall be in recordable form, must be recorded ("**Recorded**") in the Office of the Recorder of Utah County, Utah, on or before December 31, 2045, and shall contain the following information for that portion of the Additional Land which is being added:

(a) Data sufficient to identify this Declaration with respect to that portion of the Additional Land being added.

(b) The legal description of the portion of the Additional Land being added.

(c) A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, occupied, improved and developed subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

(d) Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the date any supplemental declarations and amendment to this Declaration contemplated above is Recorded, it shall automatically supplement this Declaration and any supplemental declarations and amendments to the Declarations previously recorded. At any point in time, this Declaration for the Project shall consist of this Declaration, as amended and expanded by all supplemental declarations and amendments to this Declaration theretofore Recorded pursuant to the terms hereof.

29. ALLOCATION OF ASSESSMENTS AND VOTING RIGHTS FOLLOWING EXPANSION.

Each Lot created that is or shall become subject to this Declaration shall be apportioned a share of the Common Areas Expenses attributable to the Project, as provided in Section 5(m). Each Owner of a Lot that is or shall become subject to this Declaration shall be entitled to Membership in the Association and votes in the Association to the extent provided for in Section 5(d). Assessments and voting rights with respect to any portion of the Additional Land subjected to this Declaration shall commence as of the date the Declarant records a supplemental declaration and amendment to this Declaration with respect to such portion of the Additional Land.

30. NO OBLIGATION TO EXPAND.

Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to the Project of any or all of the Additional Land; (ii) the creation or construction of any improvements; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land.

31. GENERAL PROVISIONS.

(a) **Violation Constitutes Nuisance.** The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the Lot on which the violation occurs is responsible for the removal or abatement of the nuisance.

(b) **Notice of Violation.** The Association will have the right to record a written notice of a violation by any Owner of any restriction or provision of this Declaration. The notice will be executed and acknowledged by an officer of the Association and will contain substantially the following information: (a) the name of the Owner; (b) the legal description of the Lot against which the notice is being recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner to cure the violation. Recordation of a notice of violation will serve as a notice to the Owner, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of the notice of violation, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association will record a notice of compliance which will state the legal description of the Lot against which the notice of violation was recorded, the recording data of the notice of violation, and will state that the violation

referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to record a notice of violation will not constitute a waiver of any existing violation or evidence that no violation exists.

(c) **Remedies.**

(i) **Fines.** Provided that the Association complies with all of the requirements and procedures set forth in Section 57-8a-208 of the Utah Code, as it may be amended from time to time, the Board of Directors of the Association shall have the right to assess a fine (a "**Fine**") against any Owner of a Lot within the Subdivision for a violation by any Owner of any restriction or provision of the Governing Documents of the Association. The amount of each Fine shall be \$350 per violation. Any Fine delinquent for a period of more than ten (10) days shall incur a late charge of \$25 or 5% of the delinquent amount, whichever is greater. Interest at the rate of 1.5% per month shall accrue on all delinquent Fines. The Board of Directors may, in its sole discretion, change the amount of the late charge or waive the late charge and the accruing interest but is not required to do so. The collection by the Board of Directors from an Owner of a Fine shall be subject to all of the limitations and procedures set forth in Section 57-8a-208 of the Utah Code, including the right of an Owner to request an informal hearing before the Board of Directors to dispute a Fine and the right of the Owner to appeal a Fine by initiating a civil action, as provided in Section 57-8a-208 of the Utah Code.

(ii) **Equitable Relief.** Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (during the Period of Declarant Control) or by any other Owner. In any action brought to enforce these covenants, the prevailing party will be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

(iii) **Remedies are not Limited.** Nothing in this Declaration will be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances pertaining to health, safety, abatement of nuisances or other matters. The remedies available under this Declaration are to be construed as being in addition to all other remedies available at law.

(iv) **Remedies are Cumulative.** The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(v) **No Waiver.** The delay or failure by anyone to take enforcement action with respect to any violation of this Declaration will not be construed as a waiver of the covenants contained in this Declaration with respect to such violation or with respect to any other violations.

(d) **Severability.** Each of the covenants, conditions, restrictions and provisions contained in this Declaration will be independent of the others, and in the event that any covenant, condition, restriction or provision of this Declaration is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants, conditions, restrictions and provisions of this Declaration will remain in full force and effect.

(e) **Rules and Regulations.** The Association (through its Board) will have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

(f) **Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a plat or other recorded instrument, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Mapleton Heights can or will be carried out, or that any Additional Land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

(g) **List of Owners and Eligible Members.** The Board will maintain up-to-date records showing: (i) the name(s) of each Owner, the address of each Owner, and the Lot which is owned by him or her; and (ii) the name of each person who is a mortgagee, and the address of that person and the Lot which is encumbered by the mortgage held by the mortgagee. In the event of any transfer of a fee or undivided fee interest in a Lot, the transferee will furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer has been recorded. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Lots which is obtained from the Official Records. The address of an Owner will be deemed to be the address of the Lot owned by the Owner, unless the Board is otherwise advised. The list of Owners will be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges and the Owner's execution of a privacy and nondisclosure statement prepared by the Board.

(h) **Liability.** Neither the Declarant nor any Owner will have personal liability to any other Owner for actions or inactions taken pursuant to the terms of this Declaration, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under this Declaration and without malice.

(i) **Term; Method of Termination.** This Declaration will be effective upon the date of the recording and, as amended from time to time, will continue in full force and effect for a term of 50 years from the date this Declaration is recorded. From and after that date, this Declaration, as amended, will be automatically extended for successive periods

of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting fifty-one percent (51%) of the total votes of all of the Owners cast at an election held for that purpose (or otherwise approved for that purpose in writing) within six (6) months prior to the expiration of the initial effective period hereof or any ten (10)-year extension. This Declaration may be terminated at any time, if Owners casting at least sixty-seven percent (67%) of the votes of all of the Owners are cast in favor of termination at an election held for that purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration will be effective unless and until written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from mortgagees of fifty-one percent (51%) of the Lots upon which there are mortgages. If the necessary votes and consents are obtained, the Board will cause to be recorded in the Official Records a "certificate of termination," duly signed by the President or Vice President attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration will have no further force and effect, and the Association will be dissolved pursuant to the terms set forth in its Articles. Notwithstanding the foregoing, during the Period of Declarant Control, no termination will be possible unless directed by Declarant.

(j) **Mortgagee Not Bound.** No amendment to this Declaration will be binding upon the holder of any mortgage or trust deed on any Lot which mortgage or trust deed is of record at the time of the amendment, unless the mortgage or trust deed holder joins in the amendment. This Declaration may not be repealed by amendment.

(k) **Constructive Notice.** Every Person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provisions of this Declaration against such Owner's Lot, whether or not there is any reference to this Declaration in the instrument by which such Owner acquires an interest in any Lot.

(l) **Notices.** All notices under this Declaration are deemed effective seventy-two (72) hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

(m) **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder.

(n) **Liberal Interpretation.** The provisions of this Declaration will be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Section headings are inserted for convenience only and will not be considered in the interpretation of the provisions. The singular will include the plural, and the plural will include the singular. Any reference to gender is intended to include masculine, feminine and neuter as well.

(o) **No Public Right or Dedication.** Nothing contained in this Declaration will be deemed to be a gift or dedication of all or any part of the Subdivision to the public or for any public use, except as specifically shown on the Plat.

(p) **Future Development and Views.** Each Owner, by acquiring title to a Lot within the Subdivision, shall be deemed to acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or elimination as a result of future development of residential and non-residential uses, road construction, tree growth and landscaping. Neither Declarant, the Association nor the Committee guarantee or represent that any view over and across the Lots or other Improvements, or that any open space, will be preserved without impairment, nor is there any obligation to relocate, prune, or thin trees or other landscaping. Declarant and the Association have the right to add Improvements, including but not limited to trees, walls, fences, berms, structures, signs, lighting, water features and landscaping, from time to time, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Declarant, the Association and the Committee do not assume any responsibility for any representation or promise made by any other party, including but not limited to any builder, sales counselor, independent broker or other agent or employee of a homebuilder, with regard to views. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By acquiring title to a Lot, each Owner shall be deemed to have accepted title to such Lot subject to the foregoing disclosures and disclaimers, and each Owner shall be deemed to have waived and released any and all claims of any nature against Declarant, the Association and the Committee arising out of or associated with any of the information disclosed and the related disclaimer in this Section 31(r).

[SIGNATURE PAGE FOLLOWS]

EXECUTED the day and year first above written.

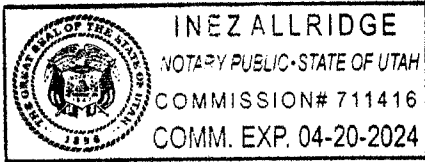
DECLARANT:

MOUNTAINVILLE DEVELOPMENT CORPORATION, a Utah corporation

By: Bart Boggess
Name: Bart Boggess
Title: President

STATE OF UTAH)
COUNTY OF Utah) : ss.

The foregoing instrument was acknowledged to me this 1st day of September, 2021, by Bart Boggess, in such person's capacity as the President of MOUNTAINVILLE DEVELOPMENT CORPORATION, a Utah corporation.



Inez Allridge
NOTARY PUBLIC

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAPLETON HEIGHTS**

(Legal Description of the Property)

The Property is located in Utah County, Utah and is more particularly described as follows:

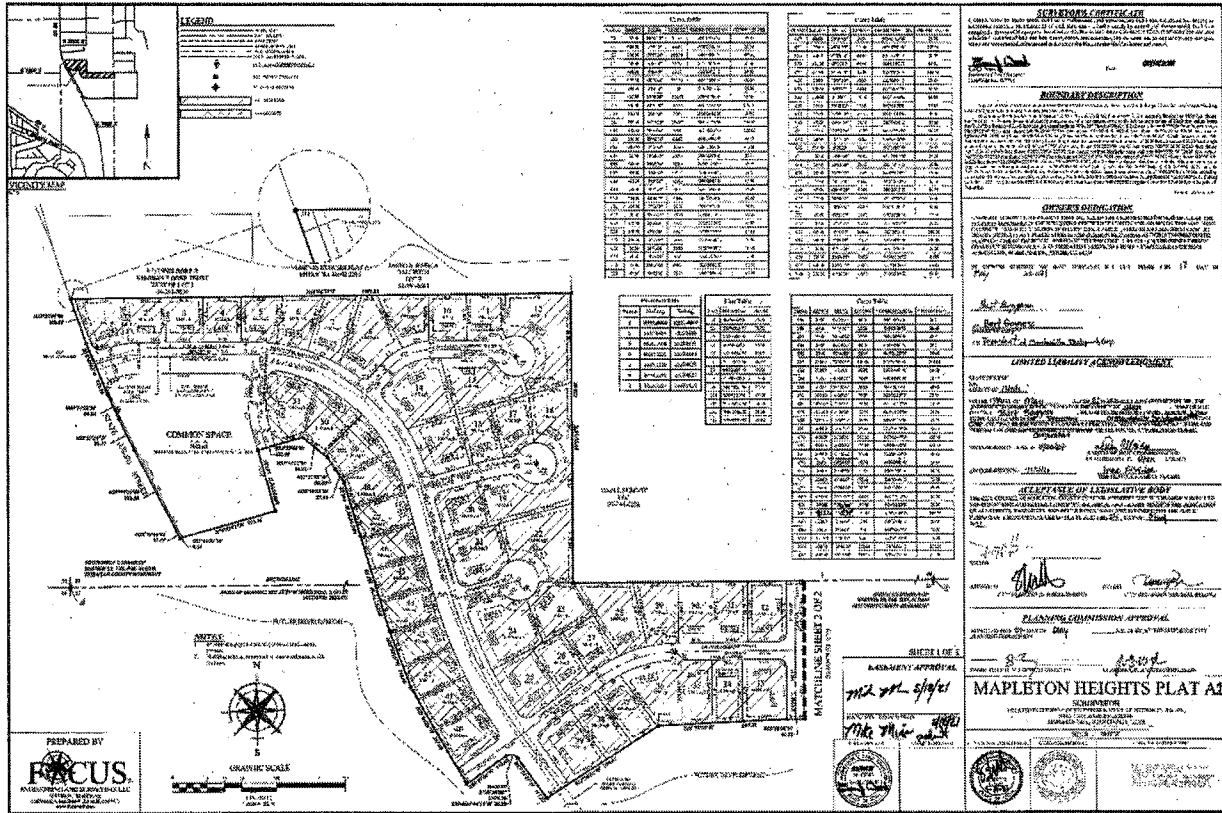
BOUNDARY DESCRIPTION, Mapleton Heights Plat A1

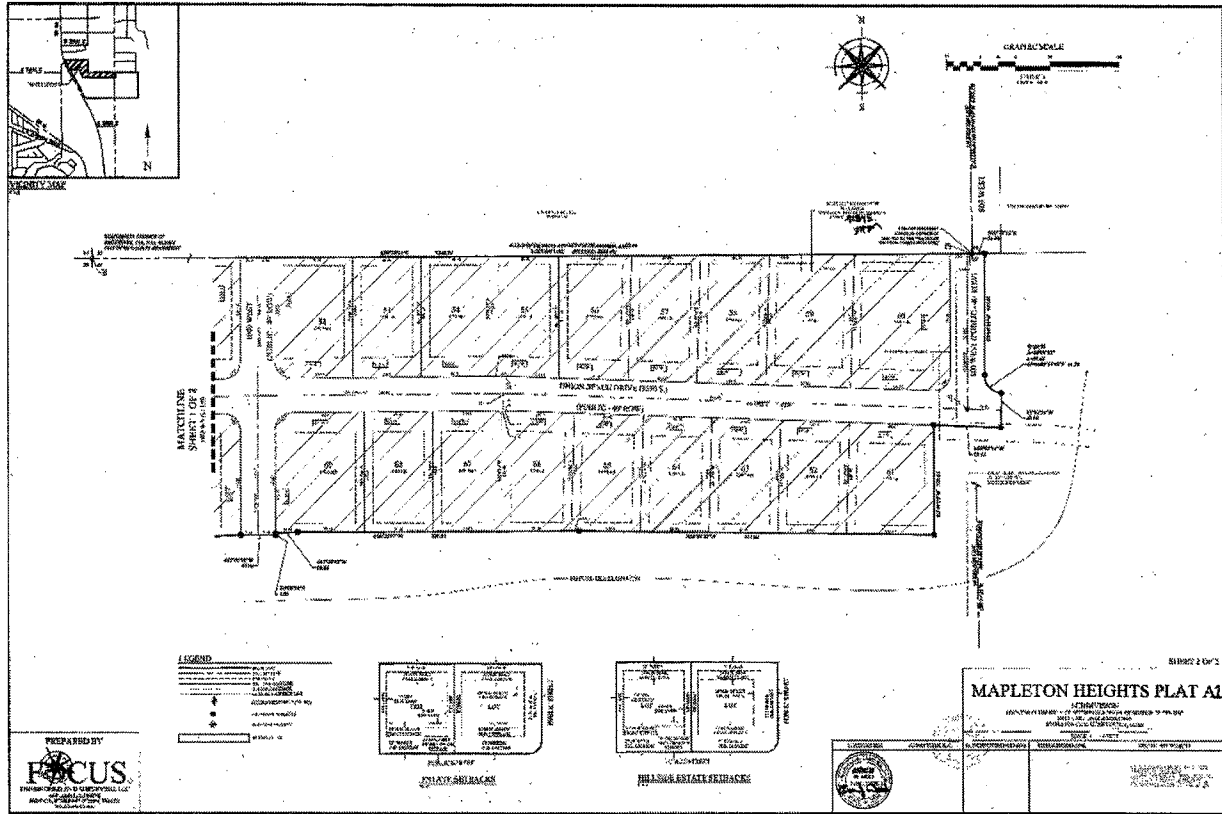
A part of the SW1/4 of Section 22 and the NE1/4 and NW1/4 of Section 27, Township 8 South, Range 3 East, Salt Lake Base & Meridian, located in Mapleton, Utah, more particularly described as follows: Beginning at the South ¼ Corner of Section 22, T8S, R3E, S.L.B.& M.; thence N89°18'12"E along the Section line 14.03 feet; thence S00°08'25"W 141.07 feet; thence Southeasterly along the arc of a non-tangent curve to the left having a radius of 20.00 feet (radius bears: S89°51'35"E) a distance of 31.43 feet through a central angle of 90°01'55" Chord: S43°08'19"E 28.29 feet; thence S01°52'38"W 40.00 feet; thence N88°07'22"W 78.13 feet; thence S00°00'29"W 125.86 feet; thence N89°24'39"W 413.03 feet; thence S89°38'27"W 326.53 feet; thence S87°24'43"W 25.84 feet; thence S00°00'54"E 1.89 feet; thence S89°59'06"W 40.00 feet; thence S87°16'50"W 297.35 feet; thence S57°29'51"W 309.44 feet; thence N35°54'24"W 113.22 feet; thence along the arc of a curve to the left with a radius of 20.00 feet a distance of 31.30 feet through a central angle of 89°39'38" Chord: N80°44'13"W 28.20 feet; thence S54°25'58"W 110.45 feet; thence N29°58'28"W 257.69 feet; thence N20°33'29"W 140.48 feet; thence N16°51'33"W 229.75 feet; thence continue Northerly along said line N16°51'33"W 126.20 feet; thence N33°19'53"W 37.83 feet; thence N33°27'39"W 30.86 feet; thence N51°10'11"W 74.81 feet; thence S74°23'42"W 107.56 feet; thence S15°36'18"E 145.26 feet; thence S74°23'42"W 223.15 feet; thence S61°49'31"W 4.54 feet to the Easterly Right-of-Way line of State Road 89; thence along said Right-of-way the following 6 (six) courses: 1) N28°10'55"W 17.77 feet; 2) N27°44'31"W 209.34 feet; 3) N26°27'29"W 80.71 feet; 4) N24°21'25"W 64.34 feet; 5) N22°44'03"W 126.70 feet; 6) N19°24'41"W 109.27 feet to the Southwest corner of VIRGINIA ESTATES, according to the Official Plat thereof recorded July 9, 2014 as Entry No. 46943:2014 in the Office of the Utah County Recorder; thence N89°24'01"E along said plat 1,161.91 feet; thence S00°05'58"E 668.06 feet to the Section line; thence N89°35'31"E along the Section line 1,345.26 feet to the point of beginning.

Contains: 27.53 acres+/-

**EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAPLETON HEIGHTS**

(Depiction of the Property)





**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAPLETON HEIGHTS**

(Legal Description of Portions of the Additional Land)

The Additional Land may include, without limitation, the following described real property located in Utah County, Utah:

PART OF THE SOUTHWEST QUARTER OF SECTION 22 AND THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE STREET (U.S. 89), SAID POINT BEING N89°35'31"E 185.72 FEET AND N00°24'29"W 664.16 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE N89°24'01"E 1161.91 FEET; THENCE S00°05'58"E 668.06 FEET; THENCE N89°35'31"E 1345.26 FEET; THENCE N89°18'12"E 1329.25 FEET; THENCE S00°07'08"E 1350.86 FEET; THENCE S89°21'52"W 1327.47 FEET; THENCE S07°38'27"E 0.10 FEET; THENCE S89°30'17"W 1344.71 FEET; THENCE N00°08'33"E 32.93 FEET; THENCE S87°30'58"W 148.97 FEET; THENCE N28°10'55"W 1639.24 FEET; THENCE N27°44'31"W 209.34 FEET; THENCE N26°27'29"W 80.71 FEET; THENCE N24°21'25"W 64.34 FEET; THENCE N22°44'03"W 126.70 FEET; THENCE N19°24'41"W 109.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 113.616 ACRES MORE OR LESS.

LESS AND EXCEPTING THEREFROM THE FOLLOWING:

BOUNDARY DESCRIPTION, Mapleton Heights Plat A1

A part of the SW1/4 of Section 22 and the NE1/4 and NW1/4 of Section 27, Township 8 South, Range 3 East, Salt Lake Base & Meridian, located in Mapleton, Utah, more particularly described as follows: Beginning at the South ¼ Corner of Section 22, T8S, R3E, S.L.B.& M.; thence N89°18'12"E along the Section line 14.03 feet; thence S00°08'25"W 141.07 feet; thence Southeasterly along the arc of a non-tangent curve to the left having a radius of 20.00 feet (radius bears: S89°51'35"E) a distance of 31.43 feet through a central angle of 90°01'55" Chord: S43°08'19"E 28.29 feet; thence S01°52'38"W 40.00 feet; thence N88°07'22"W 78.13 feet; thence S00°00'29"W 125.86 feet; thence N89°24'39"W 413.03 feet; thence S89°38'27"W 326.53 feet; thence S87°24'43"W 25.84 feet; thence S00°00'54"E 1.89 feet; thence S89°59'06"W 40.00 feet; thence S87°16'50"W 297.35 feet; thence S57°29'51"W 309.44 feet; thence N35°54'24"W 113.22 feet; thence along the arc of a curve to the left with a radius of 20.00 feet a distance of

31.30 feet through a central angle of 89°39'38" Chord: N80°44'13"W 28.20 feet; thence S54°25'58"W 110.45 feet; thence N29°58'28"W 257.69 feet; thence N20°33'29"W 140.48 feet; thence N16°51'33"W 229.75 feet; thence continue Northerly along said line N16°51'33"W 126.20 feet; thence N33°19'53"W 37.83 feet; thence N33°27'39"W 30.86 feet; thence N51°10'11"W 74.81 feet; thence S74°23'42"W 107.56 feet; thence S15°36'18"E 145.26 feet; thence S74°23'42"W 223.15 feet; thence S61°49'31"W 4.54 feet to the Easterly Right-of-Way line of State Road 89; thence along said Right-of-way the following 6 (six) courses: 1) N28°10'55"W 17.77 feet; 2) N27°44'31"W 209.34 feet; 3) N26°27'29"W 80.71 feet; 4) N24°21'25"W 64.34 feet; 5) N22°44'03"W 126.70 feet; 6) N19°24'41"W 109.27 feet to the Southwest corner of VIRGINIA ESTATES, according to the Official Plat thereof recorded July 9, 2014 as Entry No. 46943:2014 in the Office of the Utah County Recorder; thence N89°24'01"E along said plat 1,161.91 feet; thence S00°05'58"E 668.06 feet to the Section line; thence N89°35'31"E along the Section line 1,345.26 feet to the point of beginning.

Contains: 27.53 acres+/-

The Additional Land may also include one or more additional parcels of real property located adjacent to or in the vicinity of the Property, which Declarant may subsequently acquire and designate as a part of the Additional Land that is to be added to the Project.

**EXHIBIT D
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MAPLETON HEIGHTS**

BYLAWS OF MAPLETON HEIGHTS OWNERS ASSOCIATION

A UTAH NONPROFIT CORPORATION

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the “Act”), the following are the Bylaws of the Association, which is obligated to operate, manage and regulate the Project. Unless otherwise defined below, the capitalized terms set forth in these Bylaws shall have the same meanings ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Mapleton Heights (the “**Declaration**”).

ARTICLE 1

PLAN OF LOT OWNERSHIP AND INCORPORATION

1.1 Submission. These Bylaws are referred to and incorporated by reference in the Declaration. The Project is located in Mapleton City, Utah County, State of Utah. These Bylaws shall govern the administration of the Project and the Association.

1.2 Organizational Form. If the Association is incorporated, then these Bylaws shall also function as the bylaws of the corporation.

1.3 Bylaws Applicability. All present and future Owners, residents, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance to the Project shall be subject to and shall abide by these Bylaws.

**ARTICLE 2
ASSOCIATION**

2.1 Composition. The Association is a mandatory association consisting of all Owners of Lots within Mapleton Heights.

2.2 Voting. Each Lot shall have one (1) vote. Multiple Owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Organizational Owners may vote by means of an authorized agent.

2.3 Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors from time to time and stated in the notice of meeting.

2.4 Annual Meeting. Unless otherwise designated by the Board of Directors, the annual meeting of the Association shall be held at 7:00 p.m. on the first Tuesday of May of each

year, or at such other suitable date as may be designated by the Board of Directors from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

2.5 Special Meetings. The President of the Association, or a Majority of the members of the Board of Directors, may call a special meeting of the Association, or if the President of the Association is so directed by resolution of the Board of Directors or upon receipt of a petition signed and presented to the Secretary of the Board of Directors by at least twenty-five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.6 Quorum. The presence in person or by proxy of three (3) of the Owners entitled to cast a vote shall constitute a quorum for the transaction of business at any Owners meeting.

(i) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

(ii) Quorum at Rescheduled Meeting. Those Owners present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting, regardless of the number of Owners present at the rescheduled meeting.

(iii) Percentage Approval Requirement. Notwithstanding the foregoing provisions of this section, however, in any case in which the Declaration requires the affirmative vote of a certain percentage of Owners for authorization or approval of a matter, their consent, in person, by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

2.7 Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of each annual or special meeting of the Owners not less than ten (10) days in advance of such meeting. Each such notice shall state the purpose of such meeting as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice in a fair and reasonable manner.

2.8 Voting Requirements. An Owner shall be deemed to be in “good standing” and “entitled to vote” at any annual meeting or at any special meeting of the Association, if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments and/or Additional Charges due.

2.9 Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies fully executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual

written notice to the person presiding over the meeting, by the Owner or Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by the Owner or Owners as the case may be.

2.10 Action Without Meeting of Members. Any action that may be taken at any annual, regular or special meeting of the Owners as members of the Association may be taken without a meeting and without prior notice, if one or more written consents, setting forth the action taken, are signed by members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted, as authorized pursuant to Section 16-6a-707, of the Utah Code, as such Section may be subsequently amended or replaced.

2.11 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of the Owners as members of the Association may be taken without a meeting, if the Association delivers a written ballot to every member entitled to vote on the matter pursuant to the provisions and procedures set forth in Section 16-6a-709 of the Utah Code, as such Section may be subsequently amended or replaced.

ARTICLE 3

BOARD OF DIRECTORS

3.1 Powers and Duties. The affairs and business of the Association shall be managed by the Board of Directors in accordance with the Declaration. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things appropriate and necessary to operate, manage, maintain, control and regulate the Project. The Board of Directors shall have the power from time to time to adopt any rules and regulations deemed proper for the exercise of its management powers. The Board of Directors may delegate its authority to a manager or managers.

3.2 Composition of Board of Directors. The Board of Directors shall be composed of at least three (3) but no more than five (5) members. Only individual Owners or officers or agents of organizational Owners shall be eligible for Board of Directors membership.

3.3 Election and Terms of Office of the Board of Directors. The election and terms of the Board of Directors shall be carried out in accordance with the provisions of the Declaration. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until the expiration of the Class B Control Period. At the first meeting after the expiration of the Class B Control Period, five (5) members of the Board of Directors shall be elected by the Owners. Three (3) members of the Board of Directors shall be elected for two-year terms and two (2) members of the Board of Directors shall be elected for a one-year term. Thereafter, all members of the Board of Directors shall be elected for two-year terms. At the expiration of the member's term, a successor shall be elected.

3.4 Initial Meeting. The first meeting of the members of the Board of Directors shall be immediately following the annual meeting of the Association, or at such other time and place designated by the Board of Directors.

3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time and at such time and place as shall be determined by a Majority of the members of the Board of Directors.

3.6 Special Meetings. Special meetings of the Board of Directors may be called by the President, Vice-President or a Majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, by telephone, or as otherwise authorized by Section 7.1 of these Bylaws, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board of Directors shall be valid for any and all purposes.

3.7 Waiver of Notice. Before or at any meeting of the Board of Directors, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors shall constitute a waiver of notice. If all the members are present at any meeting of the Board of Directors, no notice shall be required, and any business may be transacted at such meeting.

3.8 Board of Director's Quorum. At all meetings of the Board of Directors, a Majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the Majority of all the Board of Directors members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the Majority of those present may adjourn the meeting from time to time but for no longer than two (2) days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

3.9 Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the Majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

3.10 Removal of Board of Directors Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a Majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board of Directors member who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board of Directors meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Board of Directors members shall elect a replacement to sit on the Board of Directors until the next meeting of the Association.

3.11 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a Minute Book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

3.12 Report of Board of Directors. The Board of Directors shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

3.13 Executive Session. The Board of Directors may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an executive session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

3.14 Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board of Directors.

ARTICLE 4 **OFFICERS**

4.1 Designation. The principal officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board of Directors. Two (2) or more offices may be held by the same person, except that the President shall not hold any other office.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office at the pleasure of the Board of Directors. Any vacancy in an office shall be filled by the Board of Directors at a regular meeting or special meeting called for such purpose.

4.3 Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purposes. Provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

4.4 President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board of Directors and shall be an ex-official member of all committees; he shall have general and active management of the business of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

4.5 Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint a member of the Board of Directors to do so on an interim basis.

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board of Directors including resolutions.

4.7 Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Manager, and with the assistance of the Manager shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such federally insured depositories as may be designated by the Board of Directors. He shall disburse funds as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE 5 **FISCAL YEAR**

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board of Directors should it be deemed advisable or in the best interests of the Association.

ARTICLE 6 **AMENDMENT TO BYLAWS**

6.1 Amendment.

(a) By the Board. The Board may amend the Bylaws at any time to add, change, or delete a provision, unless:

- (i) this Section or the Articles of Incorporation or Bylaws:
 - (A) reserve the power exclusively to the Members in whole or part; or

(B) otherwise prohibit the Board from amending the Bylaws to add, change, or delete a provision; or

(ii) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(b) By the Members.

(i) Unless otherwise provided by the Bylaws, the Members may amend the Bylaws even though the Bylaws may also be amended by the Board.

(ii) Amendments to the Bylaws by Members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 of the Utah Code Annotated as if each reference in Sections 16-6a-1003 and 16-6a-1004, as amended or supplemented, to the Article of Incorporation was a reference to the Bylaws.

6.2 Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the Recorder of Utah County, Utah.

ARTICLE 7

NOTICE

7.1 Fair and Reasonable Notice. Notice given in accordance with the provisions of the Act shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, the Association website, or other electronic notice; provided, however, an Owner may by making a written demand to the Association require written notice. If such written demand is made, then all notices, demands, bills, statements, or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage prepaid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Directors or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

7.2 Waiver of Notice. Whenever any notice is required to be given by the Project Documents, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE 8

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

8.1 Compliance. These Bylaws are set forth in compliance with the requirements of the Declaration.

8.2 Conflict. These Bylaws are subordinate to and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the

same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control.

8.3 Severability. If any provision of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and, to this end, the provisions hereof are declared to be severable.

8.4 Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

8.5 Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

8.6 Gender and Grammar. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

8.7 Liability of Board of Directors Members. Neither the members of the Board of Directors nor the officers of the Association shall be liable to any Owner, Resident or person for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Board of Directors, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the Owners and Residents, by virtue of their taking title to or possession of a Lot, agree to indemnify, defend and hold harmless the members of the Board of Directors and officers of the Association from and against any and all claims arising out of or caused by their voluntary participation as a member of the Board of Directors or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

8.8 Attorneys' Fees, Assessments and Costs. If an Owner or Resident, or their families, guests or invitees shall, at any time, violate the terms, covenants or conditions of these Bylaws, and the Board of Directors shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or Resident shall reimburse the Board of Directors for all costs and expenses, including but not limited to reasonable attorneys' fees. To secure payment of any unpaid costs or Assessments, the Board of Directors shall have the right and power to file a lien against the Lot owned or occupied, and may proceed to collect the same by judgment or foreclosure. In the event of a breach or anticipated breach by an Owner or Resident, or by their family, guests or invitees, of any of the terms, covenants, or conditions of these Bylaws, the Board of Directors shall have, in addition to any other remedies provided by law equity, the right to injunctive relief and damages.

8.9 Persons Bound. All references herein to an Owner, Resident, tenant, renter, lessee, guest, or invitee shall be deemed to include their respective executors, administrators, employees, representatives, successors and assigns, and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

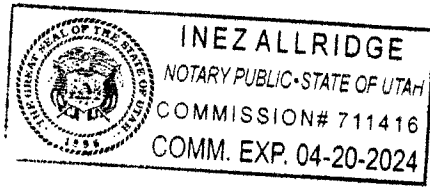
Dated this 19th day of September, 2021.

MAPLETON HEIGHTS OWNERS
ASSOCIATION,
a Utah nonprofit corporation

By: *Bart Boggess*
Name: Bart Boggess
Title: President

STATE OF UTAH)
): ss.
COUNTY OF Utah)

The foregoing copy of the Bylaws of Mapleton Heights Owners Association was acknowledged before me this 19th day of September, 2021, by Bart Boggess in such person's capacity as the President of Mapleton Heights Owners Association, a Utah nonprofit corporation.



Inez Allridge
NOTARY PUBLIC