

After recording mail to:  
Rocky Canyon Properties, LLC  
165 North 100 East, Suite 1  
St. George, UT 84770

Record against the Property  
described in Exhibit "A"

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS, AND PROTECTIVE COVENANTS  
OF  
PALISADES AT SNOW CANYON**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND PROTECTIVE COVENANTS OF PALISADES AT SNOW CANYON (this "Declaration") is executed Rocky Canyon Properties, LLC, a Utah limited liability company ("Declarant"), and is effective as of the date it is recorded in the Washington County Recorder's office.

**RECITALS**

A. On November 19, 2013, Gardner-Plumb Ivins, L.C., a Utah limited liability company ("Predecessor Declarant") recorded with the Recorder of Washington County, Utah, a Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon as Document No. 20130043086 ("Enabling Declaration") and the related Map of the Palisades at Snow Canyon Phase 1 as Entry No. 20130043085. The Enabling Declaration was recorded against the real property identified as Phase 1 on Exhibit "A" to this Declaration.

B. On November 19, 2013, Predecessor Declarant recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 1 ("Phase 1 Plat") as Document No. 20130043085.

C. On January 21, 2014, Predecessor Declarant recorded with the Recorder of Washington County, Utah, a First Amendment to Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon ("First Amendment") as Document No. 20140001976. The First Amendment expanded the Project pursuant to Article 12 of the Enabling Declaration to include the land consisting of Phases 2, 3, 4, and 5 as identified on Exhibit "A" to this Declaration.

D. On January 21, 2014, Predecessor Declarant sold and conveyed the land consisting of Phases 2, 3, 4, and 5 to Kingsbury Development, LLC, a Nevada limited

liability company ("Kingsbury"), which conveyance is set forth by the Warranty Deed recorded with the Recorder of Washington County as Document No. 20140001977.

E. On August 22, 2014, Predecessor Declarant, or its successors or assigns, recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 1 Amended ("Amended Phase 1 Plat") as Document No. 20140025657.

F. On September 26, 2014, Kingsbury recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 2 ("Phase 2 Plat") as Document No. 20140029490.

G. On September 26, 2014, Predecessor Declarant and Kingsbury recorded with the Recorder of Washington County, Utah, a Second Amendment to Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon ("Second Amendment") as Document No. 20140029492.

H. On April 22, 2015, Predecessor Declarant recorded with the Recorder of Washington County, Utah, a Third Amendment to Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon ("Third Amendment") as Document No. 20150013381.

I. On May 4, 2016, Kingsbury recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 3 ("Phase 3 Plat") as Document No. 20160015668.

J. On May 4, 2016, Kingsbury recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 4 ("Phase 4 Plat") as Document No. 20160015670.

K. On May 4, 2016, Kingsbury recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 5 ("Phase 5 Plat") as Document No. 20160015672.

L. On February 1, 2018, the Association recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 1 Second Amendment ("Second Amended Phase 1 Plat") as Document No. 20180004791.

M. On February 1, 2018, the plat map for The Palisades at Snow Canyon Phase 2 Amended and Extended ("Amended and Extended Phase 2 Plat") was recorded with the Recorder of Washington County, Utah as Document No. 20180004794.

N. On February 27, 2019, Predecessor Declarant recorded with the Recorder of Washington County, Utah, an Assignment of Declarant Rights Under Declaration of Covenants and Easements for the Palisades at Snow Canyon as Document No. 20190007298, whereby Predecessor Declarant assigned and transferred all of Predecessor Declarant's rights and obligations under the Enabling Declaration, as amended, to Declarant.

O. On June 14, 2019, the Declarant recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 6 ("Phase 6 Plat") as Document No. 20190023537.

P. On March 12, 2020, Declarant recorded with the Recorder of Washington County, Utah, a Fourth Amendment to Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon ("Fourth Amendment") as Document No. 202000012560.

Q. On June 8, 2020, the Declarant recorded with the Recorder of Washington County, Utah the plat map for The Palisades at Snow Canyon Phase 6 Amd ("Amended Phase 6 Plat") as Document No. 202000028498.

R. On October 10, 2020, the plat map for The Palisades at Snow Canyon Phase 7 ("Phase 7 Plat") was recorded with the Recorder of Washington County, Utah as Document No. 20200058519.

S. On February 26, 2021, the plat map for The Palisades at Snow Canyon Phase 8 ("Phase 8 Plat") was recorded with the Recorder of Washington County, Utah as Document No. 20210013672.

T. On March 22, 2021, Declarant recorded with the Recorder of Washington County, Utah, a Fifth Amendment to Declaration of Covenants, Conditions, Easements and Protective Covenants of Palisades at Snow Canyon ("Fifth Amendment") as Document No. 20210020061.

U. The Declarant adopts this Declaration pursuant to its amendment rights in Article 12 of the Enabling Declaration, as amended.

V. This Declaration amends, replaces, and supersedes the provisions of the Enabling Declaration, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and any other unrecorded amendments to the Enabling Declaration which may exist. This Declaration is intended to be the controlling declaration of covenants, conditions, easements, and protective covenants for the Project, which Declaration may be amended from time to time.

W. This Declaration affects the real property, which is located in Washington County, Utah, and described on Exhibit "A" attached hereto and incorporated herein by this reference.

X. This Declaration is adopted to further set forth the Declarant's rights in and to the Project, to define the rights of the Association and the Owners, to provide for a general plan for managing the Project and Property, and in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Lots, Homes, and the Project.

Y. The Community Association Act, Utah Code § 57-8a-101, *et. seq.* (the "Association Act"), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Association Act, such amendment shall grant a right, power, and privilege permitted by such section of the

Association Act, together with all correlative obligations, liabilities and restrictions of that section. The remedies in the Association Act and this Declaration -- provided by law or in equity -- are cumulative and not mutually exclusive.

NOW, THEREFORE, for the reasons recited above and subject to the terms and conditions set forth below, Declarant establishes the following covenants, conditions, easements, and protective covenants which shall govern the Project and amends and replaces the Enabling Declaration and all amendments thereto with the following:

1. Definitions. As used in this Declaration, capitalized terms shall have the meanings set forth on Exhibit "B" and as otherwise defined in the Declaration. The definitions in this Declaration are supplemented, as necessary, by the definitions in the Association Act. In the event of any conflict, the more specific and restrictive definition shall apply.

2. Grant.

2.1 Plat. Developer has included all of the Property in the Plats of Palisades at Snow Canyon Subdivision and divided such Property into private streets, Lots and Common Area, as shown on the Plats.

2.2 Easement Areas. Declarant grants and creates the easement in the Easement Areas on each Lot as set forth on the Plat. Except to the extent as set forth in Section 4.3.2 with respect to a single Home constructed on more than one (1) Lot, the easements indicated on said Plat are hereby perpetually reserved for public utilities and for any other uses as designated on the Plat or set forth in this Declaration.

2.3 Declaration Binding on Successors; Runs with Land. Declarant further declares that all of the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, covenants, conditions, easements, and protective covenants set forth in this Declaration. Each grantee or purchaser of a Lot shall take his, her, or its interest in the Lot subject to all of the terms of this Declaration. All limitations, restrictions, conditions, easements, and covenants set forth in this Declaration run with the land and shall inure to the benefit, and burden the estate, of each successor in interest of each Lot.

2.4 Project Name and Nature of Project. The Project is named the "Palisades at Snow Canyon" and is located entirely in Washington County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat. The name used by the Association for the Project may be changed through amendments to this Declaration or the Plat. The Project is a planned unit development for single-family homes. The Project is neither a cooperative nor a condominium.

2.5 Subject to Association Act. The Project is subject to the Association Act, as amended from time to time, and the terms of the Association Act shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Association Act, such amendment shall grant a right, power, and privilege permitted by such section of the Association Act, together with all correlative obligations,

liabilities and restrictions of that section. The remedies in the Association Act and this Declaration -- provided by law or in equity -- are cumulative and not mutually exclusive.

3. Common Area.

3.1 Title to Common Area. Predecessor Declarant, Kingsbury, and Declarant have conveyed, or will convey, fee simple title to the Common Area to the Association, subject to the Declaration and all easements and rights-of-way of record but free and clear of all other encumbrances and liens. By accepting the deed to the Common Area, the Association covenants and agrees to fulfill all the terms of this Declaration to maintain the Common Area in good repair and first-class condition in accordance with the highest standards governing communities in Washington County, Utah, and at all times and to operate the Common Area at the expense of the Association. The infrastructure on Phases 2-5, as required by the City of Ivins, including, without limitation, any roadways, curb, gutter, water, and utilities was constructed, at Kingsbury's sole cost and expense, and not the Predecessor Declarant or Declarant. Kingsbury further constructed and installed, at its sole cost and expense, the ditch or piping at the northern border of the Project required for diversion, drainage and/or collection of water, and any portion of that system identified as a drainage easement (the "Drainage Improvements"). Any Drainage Improvements conveyed to the Association will be maintained by the Association as part of the Common Area.

3.2 Rights of Owners to Use Common Area. Every Owner has a right and easement of use and enjoyment in and to the Common Area.

3.3 Rules. Pursuant to Utah Code §57-8a-217, the Trustees have the authority to promulgate rules and regulations (the "Rules") for the governance of the Property and Persons owning or using the Property including, without limitation, the use of the Common Area. The Rules shall be compiled by the Association, which shall make copies available to the Owners for inspection and copying at the expense of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code § 57-8a-218 are hereby modified to not apply to the Association.

3.3.1. Pursuant to Utah Code §57-8a-217(6), Declarant is hereby exempt from the rulemaking procedure provisions of Utah Code § 57-8a-217 during the Development Phase.

3.4 Owner's Rights to Common Area Run with the Land: Certain Restrictions on Rights. The rights and easements granted to each Owner pursuant to this Section are appurtenant to and pass with title to the Lot owned by such Owner, and shall be subject to:

3.4.1.1 The right of the Association to suspend the voting rights and/or common utility service of a Member:

3.4.1.1.1. For any period during which any Assessment or portion thereof against the Owner's Lot remains unpaid.

3.4.1.1.2. For any period that such Member is in violation of this Declaration or the Association's other Governing Documents.

3.4.1.2 The right of the Association to grant easements across the Common Area and Easement Areas for public utilities or other public purposes consistent with the intended use of the Common Area or Easement Areas.

3.4.1.3 The right of the Association to take any and all reasonable actions to protect the Common Area against foreclosure or to remove any encumbrances existing or claimed to be existing with respect to the Common Area.

3.4.1.4 The terms and conditions of this Declaration and other Governing Documents.

3.4.1.5 The right of the Association to adopt and enforce the Rules.

3.5 Installation of Certain Improvements to Common Areas. Developer is responsible for the initial installation of the following improvements:

3.5.1 The storm water drainage system required by Ivins City to be developed and installed in connection with the subdivision and development of the Lots.

3.5.2 The landscaping improvements within the right-of-way of Park Avenue or adjacent to such right-of-way that are required to be installed by Ivins City in connection with the subdivision and development of the Lots.

3.6 Care and Maintenance of the Common Areas. The Association is responsible for care and maintenance of the Common Areas. Without limiting the foregoing, the Association shall maintain and repair the landscaping immediately adjacent to Park Avenue installed by Developer pursuant to Section 3.5. The Association is responsible for maintenance of the streetscape along the Easterly side of Park Avenue if required by Ivins City.

3.6.1 There is a drainage easement supporting a drainage swale upon Lot 328 ("Lot 238 Drainage Swale"). It is the Association's obligation to maintain and repair the Lot 328 Drainage Swale, and the Association has a perpetual, non-exclusive easement over and across Lot 328 to complete such maintenance.

3.7 Damage to Common Areas. Notwithstanding the provisions of Section 3.6, any damage to the Common Areas or to any personal property owned by the Association caused by any Lot Owner and/or their agents, guest or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered. In the event of failure of the Owner to make required repairs, the Association may make such repairs and the responsible Lot Owner shall be obligated to pay the Association the amount of the cost of repair plus interest at the reasonable rate established from time to time by the Association as part of the Rules. Any amount owed to the Association as a result of the repair of the damage to the Common Area shall be an individual Assessment charged solely to the Lot Owner or Lot Owners causing the damage.

#### 4. Use Restrictions.

4.1 Lots and Homes Limited to Residential Use. Each Lot shall be used only for the purpose of constructing one (1) Home, and the occupancy of the Home by one (1) Family for residential purposes, and for no other purposes. Except as set forth in Section 4.18, no professional business or commercial use shall be made of any Lot or any Home located thereon; provided, however, that the restrictions contained in this

Section shall not be construed in such a manner as to prohibit an Owner or Resident from any of the following if and to the extent permitted by Governmental Requirements:

4.1.1. Maintaining a personal professional library, office or study in Owner's Home for Owner's own use;

4.1.2. Keeping personal business or professional records or accounts in Owner's Home; or

4.1.3. Handling personal, business or professional telephone calls, electronic communication or correspondence from Owner's Home provided that no clients customers, prospects or other Persons come to the Home in connection with the business or profession.

4.2 Rental of Home. An Owner may lease or rent a Home to a Resident for occupancy by such Resident and the Resident's Family. Each such Lease shall be in writing. The initial term of such lease or rental agreement shall not be less than six (6) months, but may thereafter be extended on a month-to-month basis. An Owner shall provide written notice to the Association of any lease or rental of the Home located on Owner's Lot, which notice shall state the name of the Resident and the term of the lease or rental agreement. No Home shall be rented on a daily or weekly basis. Except for occasional overnight guests of the Owner or a Resident who do not pay for accommodations, no Home shall be occupied by more than one (1) Family at any time.

4.2.1. The Association may adopt reasonable Rules related to reporting and procedural requirements for any Homes which are rented to assist with the administration of the Association and enforcement of this Declaration.

4.3 Lot Size.

4.3.1. The area of each Lot as established by the Plat constitutes the minimum size of such Lot, and no Person shall further subdivide or adjust the boundary lines of such Lot.

4.3.2. Adjacent Lots may be combined for construction of one (1) single family Home constructed across the common boundary line of such Lots. In the event of such combination of adjacent Lots, all easements and rights of the Association, its Members, other Lot Owners, and third Persons (including, without limitation, governmental authorities and utility companies) in the boundary area between such Lots which had been exercised or used prior to construction of the single family Home on the adjacent Lots shall remain in place, shall be enforceable and may be used in perpetuity by the beneficiaries of such easements and rights, and their successors and assigns. However, all easements and other rights in the boundary area between such Lots which had not been exercised or used prior to construction of the Home may not thereafter be exercised and each use of the Easement Areas which is abandoned for more than six (6) months may not thereafter be resumed. For purposes of levying Assessments and voting, Adjacent Lots on which one (1) Home is located shall continue to be treated as separate Lots for Assessment purposes and for Membership and voting purposes; however, upon written request of the Owner of the Adjacent Lots and the written approval of the Trustees, which may be withheld at their sole and absolute discretion, the Lots on which a single Home is located may be combined into one (1) Lot in which event, the combined

Lots shall thereafter be assessed as one (1) Lot and the Owner thereof shall have only one (1) Class A Membership interest and one (1) vote on account of the ownership of such Adjacent Lots.

4.4 Care and Maintenance of Lot and Home. The Owner of each Lot shall keep Owner's Lot free from rubbish, litter and noxious weeds. All Homes and other permitted structures, landscaping and improvements shall be maintained in good condition and repair at all times in a manner that, in the judgment of the Trustees does not detract from the appearance of the Lot or the Home located thereon, or adversely impact the value, appearance or use of any other Lot or Home. Each Owner shall be responsible for maintenance of Owner's Lot. In the event any Owner fails to perform required maintenance, the Trustees shall have the right but not the obligation to cause all required maintenance to be performed on the Lot and Home and the cost of said maintenance, plus interest at the reasonable rate established from time to time by the Association as part of the Rules, shall be charged as an individual Assessment the subject Lot and Lot Owner. The Trustees, or the Association's authorized representatives, after giving not less than forty-eight (48) hours advance notice posted to the Lot, may access a Lot, including the Home, from time to time during reasonable hours, as necessary for maintenance, repair, or replacement of any of the Common Areas. If repair to a Lot, Home, or Common Area -- that if not made in a timely manner -- will likely result in immediate and substantial damage to a Common Area or another Lot or Home, then the Trustees, or other authorized representatives of the Association, may enter the Lot or the Home to make the emergency repair upon such notice as is reasonable under the circumstances.

4.5 Restrictions Applicable to Easement Areas and Setback Areas. No building or other structure shall be built or maintained within the setback areas. No improvement, planting or other material shall be placed or permitted to remain within the Easement Areas which may damage or interfere with the installation, maintenance or replacement of utilities in the Easement Areas, change the direction or flow of drainage channels in the Easement Areas, or obstruct or retard the flow of water through drainage channels in the Easement Areas. The Easement Areas on each Lot and all improvements in such Easement Areas shall be maintained continuously by the Owner of the Lot at Owner's cost and expense except for those improvements for which a public authority or utility company is responsible, or for those improvements which the Association agrees to maintain and include in the Budget. The Owner of each Lot shall from time to time as may be reasonably required, grant additional rights over, across, on, under and upon the Easement Areas for such additional utilities and communication information services as may be provided from time to time by a public authority, public or private utility company or the Association. Given the rapid change in the nature and types of utility and communication services, this provision shall be construed liberally to facilitate the access of all Owners to available utilities, communication, media, information services and similar services, whether known or unknown, anticipated or unanticipated.

4.6 No Hazardous Activities. No activities shall be conducted or improvements constructed on the Property which are or might be unsafe or hazardous to any Person or to any other real or personal property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit



while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

4.7 Motorbikes. All motorcycles, trail bikes, three-wheel powered devices automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by a natural Person with a valid driver's license and only on established Roads. Such vehicles are specifically prohibited from all other portions of the Property, and are to be used on said Roads only for ingress, egress, and access purposes and not for recreational purposes. The Association shall have absolute and sole discretion to make Rules governing the use of any type of vehicle within the Property and may prohibit entirely the use of trail bikes, three-wheel power devices and ATV type vehicles.

4.8 Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and plants (including those which constitute a fire hazard) on the Owner's Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Homes and other surrounding properties; and shall otherwise comply with any applicable Governmental Requirements pertaining to the removal and/or control of such noxious weeds and fire hazards. The Association may adopt Rules further regulating the maintenance standards of noxious weeds and plants, including such maintenance standards applicable to Unimproved Lots. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health or which constitute a fire hazard.

4.9 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to adjoining Lots or other surrounding properties. No outdoor clothes drying or storage of any articles which are visible from any public street shall be permitted. No clutter, debris, or other such materials shall be permitted which are visible from any Road. No Lot shall be used in a manner which shall endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

4.10 Safe Condition. Without limiting any other provision of this Declaration each Owner shall maintain and keep the Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

4.11 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon, in or under the Property.

4.12 Agricultural Activities. Dogs, cats or other domesticated household pets, two (2) or less in total number, unless otherwise set forth in the Rules, may be kept in a Home constructed on a Lot; provided, no pets may be kept, bred, or maintained for sale or for any commercial purpose. All permitted pets shall be strictly controlled and kept pursuant to all applicable laws and ordinances, and shall be on a leash or inside a fence when outside the Owner's Home. No other animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property.

4.13 Garbage and Refuse Disposal. No Lot or part or portion of the Property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Trash, rubbish, rubble, garbage or other waste produced on a Lot or within the Property shall be kept only in sanitary containers inside a structure except when placed for collection. There shall be no outside refuse storage. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable Governmental Requirements inside Homes that are properly equipped with inside incinerator units.

4.14 Water Supply. Each Home shall be connected to and use the municipal culinary water supply. No individual culinary water supply system or well shall be used or permitted to be used on any Lot, part or portion of the Property. Initially, culinary water shall be used for all outside watering; however, when Ivins City provides secondary irrigation water then all outside watering, other than through hose bibs plumbed with the Home, shall be through the irrigation system provided by Ivins City.

4.15 Sewage Disposal. Each Home shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system or septic tank shall be permitted on any Lot.

4.16 Parking and Storage of Vehicles, RV's, and Boats. The Association may adopt Rules regulating the parking and storage of automobiles and other vehicles, including, without limitation, recreational vehicles, motor homes, trailers, campers, vans, sprinter vans, motorbikes, ATVs, and boats, within any portion of the Project.

4.17 Construction of Home; Time Period of Commencement. Notwithstanding any other provision of this Declaration, the Owner who gained title to a Lot prior to the date this Declaration is recorded with the Washington County Recorder must commence construction of a Home on the Lot no later than the tenth (10<sup>th</sup>) anniversary of the date the Declarant first deeded the Lot to a third Person. Any Person who gains title to a Lot after the date this Declaration is recorded with the Washington County Recorder must commence construction of a Home on the Lot no later than the third (3<sup>rd</sup>) anniversary of the date the Declarant first deeded the Lot to a third Person, unless the Association, in its absolute and sole discretion, grants, in writing, an extension for the Owner to commence construction of the Home on the Lot. Each Person accepting a deed from Declarant, any of its successors, or any other Person after the date this Declaration is recorded irrevocably and unconditionally agrees to the foregoing covenant. Any Lot which is in violation of the foregoing requirement shall constitute an "Unimproved Lot" and shall be subject to the Assessment on Unimproved Lots set forth in Section 10.9.

4.18 Business and Sales Activities. Notwithstanding any provisions to the contrary contained in this Declaration but subject to Governmental Requirements, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required convenient or incidental to the construction and sale of Homes and the sale of lots during the Development Phase. Such activities may be conducted upon such portion of the Property, including the Common Area and any Lots owned by Declarant or its affiliates, as Declarant deems necessary or desirable, including, but not limited to, a business office, storage areas, construction yard, signs, model units and sales

offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant or its affiliates shall have the right of use of any Lots owned by Declarant or its affiliates or any part of the Common Area, including any Easement Areas, without charge during the Development Phase. Declarant may delegate its rights under this Section to one or more homebuilders.

4.19 Display of the Flag. The Association may not prohibit an Owner from displaying the United States flag inside a Home or on the Owner's Lot or any limited common area appurtenant to the Owner's Lot, if any, if the display complies with United States Code, Title 4, Chapter 1. The Association may, by Rule, restrict the display of a United States flag on the Association's Common Area.

5. Architectural Control Committee.

5.1 Creation of Architectural Control Committee. The Declarant shall establish, and the Declarant and the Association, as applicable shall continue, a committee (the "Architectural Control Committee") for the purposes set forth in this Article 5 including, without limitations, to Finally Approve all aspects of the excavation, construction or remodeling of the buildings, structures, landscaping or other improvements on the Lots. Prior to the commencement of any excavation, construction or remodeling of any building or structure or of any addition to any building or structure, or modification of the natural topography of any Lot, or installation of fences, walls or landscaping elements (all of the foregoing being referred to in this Declaration as the "Work"), Final Approval of the Architectural Control Committee is required in accordance with the provisions of this Section 5.

5.2 Number of Members of Architectural Control Committee; Manner of Appointment. The Architectural Control Committee shall consist of three (3) individual Persons. Until the end of the Development Phase, Declarant may appoint all three (3) individual Persons to be the Architectural Control Committee. After the end of the Development Phase, the Architectural Control Committee shall consist of the Trustees of the Association or three (3) individual Persons appointed by the Trustees.

5.3 Meetings of Architectural Control Committee. The Architectural Control Committee may adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection by a Trustee or Member upon written request. The Architectural Control Committee shall, by a majority of the votes of its members, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to Members who have made written application to the Architectural Control Committee for approval of plans and specifications.

5.4 Compensation; Reimbursement of Expenses. The members of the Architectural Control Committee shall only receive compensation for services rendered as approved by the Developer or the Trustees. Such members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants (including Persons affiliated with Declarant) retained by the Architectural Control Committee shall

be paid such compensation as the Declarant or Architectural Control Committee determines. The Association may charge a plan fee that is equivalent to the cost of reviewing the plans. As used in this section, "plans" mean any plans for the construction or improvement of a Lot which are required to be approved by the Association before the construction or improvement may occur.

5.5 Plans and Specifications. An Owner proposing to perform Work or make improvements to a Lot shall submit a complete set of the plans and specifications for the proposed work to the Architectural Control Committee. The Association's Architectural Guidelines may set forth the requirements of what an Owner must include in the complete set of plans and specifications.

At the time of submitting the plans, the Owner shall pay to the Declarant or, after the Development Phase, the Association, a non-refundable plan review fee. The fee is set by the Declarant or, after the Development Phase, the Association. The fee shall be used to reimburse and compensate the Association for the costs incurred in reviewing the plans by members of the Architectural Control Committee and any Professional Consultants. The plan review fee shall be non-refundable regardless of whether the plans are approved.

No Work shall commence unless and until the Architectural Control Committee provides its written approval that such plans are in compliance with the covenants set forth in this Declaration and with the standards established in this Declaration, the Architectural Guidelines, or by the Architectural Control Committee (the "Final Approval" or "Finally Approve"). A set of such plans shall be filed as a permanent record with the Architectural Control Committee; a set of the plans shall be released to the Owner's contractor; and a set of the Plans shall be retained by the City. The Association shall indemnify, defend and hold the members of the Architectural Control Committee harmless from and against any claim, action, loss or liability arising in connection with their approval or rejection of any plans and specifications except for their gross negligence or willful misconduct. The Architectural Control Committee will return without review any set of plans not including all the above items.

5.6 Standards Governing Final Approval. The Architectural Control Committee has the right to refuse to Finally Approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property. The Architectural Control Committee may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications, but in the absence of such standards the Architectural Control Committee may approve or disapprove plans and specifications the Architectural Control Committee's sole discretion. Without limiting the foregoing, the Architectural Control Committee may, but shall not be obligated to, maintain stucco samples, sample roofing materials, slate, stone and cultured stone which are approved by the Architectural Control Committee in the sales office or at some other location proximate to the Property.

5.7 Failure of Architectural Control Committee to Approve. In the event the Architectural Control Committee fails to Finally Approve in writing any such plans and specifications within sixty (60) days after the submission thereof to the Architectural Control Committee, then the Architectural Control Committee shall be deemed to have not approved the plans and specifications.

5.8 Limitation on Claims. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designed, architect, or contractor. The Architectural Control Committee's review and Final Approval of plans shall in no way be concerned with structural or mechanical integrity or soundness of any improvements.

5.9 Final Approval Does Not Constitute Waiver. The Final Approval of the Architectural Control Committee of any plans and specifications for any Work shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

5.10 Declarant Exempt. The Declarant shall be exempt from the provisions, restrictions, and requirements of this Declaration, relating to marketing, signage, sales and other such commercial activities, as the same exists or it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.

5.11 Declarant Approval During Development Phase. Notwithstanding any other provision to the contrary, each Owner who accepts a deed or instrument conveying any interest in any portion of the Property after the recordation of this Declaration acknowledges that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner who accepts a deed or instrument conveying any interest in any portion of the Property after the recordation of this Declaration agrees that during the Development Phase no Work shall be commenced on such Owner's Home or Lot unless and until Declarant or its designee has given its written approval for such Work, which approval may be granted or reasonably withheld in Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person.

6. Compliance with Governmental Requirements.

6.1 Permits and Approvals Required. No living unit, accessory or addition to a living unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until all required permits or approvals for the same are obtained from Governmental Authorities following submission to the appropriate governmental entity of such information as it may require. Final Approval of the Architectural Control Committee

shall not constitute any assurance that required permits or approvals can be obtained from Governmental Authorities.

6.2 Approval of Governmental Authorities Not Binding on Architectural Control Committee. The granting of a permit or approval by any Governmental Authority with respect to any matter shall not bind or otherwise affect the power of the Architectural Control Committee to refuse to approve any such matter.

6.3 Soils and Foundation. The Lot Owner is required to obtain a soils test and recommendation regarding the foundation for the Home to be located on the Lot from a Utah registered engineer prior to commencing any construction of a Home on the Lot. The Architectural Control Committee requires that the Lot Owner obtain a soils test and recommendation on foundation prior to the Final Approval. Furthermore, the Architectural Control Committee may condition Final Approval on the Owner following the recommendations set forth in the soils test and foundation recommendation.

7. Design Restrictions. The Trustees or Architectural Control Committee may establish design criteria, restrictions, and guidelines (the "Architectural Guidelines" "Design Guidelines" or "Guidelines") applicable to the Project. Such Architectural Guidelines shall be considered part of the Association's Rules; however, the Architectural Guidelines may be set forth in a document separate from the Association's other Rules. The Architectural Guidelines may include requirements and restrictions on landscaping. Owners submitting plans and specifications for Work to be approved and completed on the Owner's Lot have the responsibility to obtain and review the most current version of the Architectural Guidelines and ensure compliance of the proposed Work and approval process with the requirements set forth in the Architectural Guidelines.

8. Construction and Contractor Provisions.

8.1 Purpose. In order to promote a harmonious community development and protect the character of the neighborhood, the Association may adopt guidelines applicable to construction activities within the Project. Unless otherwise expressly set forth or modified in the Rules or Architectural Guidelines, the guidelines set forth in this Section 8 shall apply to such construction activities within the Project.

8.2 Completion of Construction. The construction of any Home on any Lot shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within twelve (12) months after such commencement. Any other permitted structure shall be constructed in such time as is reasonably prescribed by the Architectural Control Committee in connection with the Final Approval of such structure.

8.3 Building Materials Storage. No Lot or portion of the Property shall be used or maintained as a storage site for building materials except during a construction phase and then only to the extent reasonably required in connection with a Home on a Lot. Once a Home is occupied or made available for sale all building materials shall be removed or stored inside a Home, or accessory building out of public sight.

8.4 Landscaping. Unless otherwise approved by the Board, all landscaping on a Lot shall be completed in accordance with the provisions of the Design Guidelines prior to occupying the Home on such Lot.

8.5 Damages. Any damage to existing improvements (such as, without limitation, curbs, gutters, streets and concrete sidewalks) by an Owner and/or Owner's contractor or their agents must be repaired by such Owner not later than the date the Home is substantially completed or within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by such Owner.

8.6 Maintenance of Lot During Construction of Home. Contractors or subcontractors must provide on-site dumpsters during construction and are required to clean up on a reasonable basis to maintain a clean work site during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Property must be cleaned up within three (3) business days by the contractor or subcontractor.

8.7 Contractor Restrictions. To ensure compliance with the other provisions of the Governing Documents, including without limitation the Architectural Guidelines and the requirements of this Section 8 of the Declaration, all Lots shall be subject to the covenant and restriction set forth in this Section 8.7. Notwithstanding any other provision of this Declaration, Declarant agrees and covenants, for itself and its successors and assigns which become Owners of the Lots, that all Work on any Lot, including the initial construction of a Home and Work done on the Lot after the initial construction of the Home, shall be performed by a licensed contractor approved by the Architectural Control Committee (an "Approved Contractor").

8.7.1. Subject to Section 8.7.3, the Architectural Control Committee shall have authority, at its sole discretion, to: (i) create, and periodically update, a list of Approved Contractors; (ii) limit the total number of Approved Contractors, the number of Approved Contractors for a type of Work to be performed, or both; (iii) remove the Approved Contractor designation from a licensed contractor previously designated as an Approved Contractor; and (iv) require licensed contractors previously designated as Approved Contractors to reapply for approval to be an Approved Contractor if the licensed contractor has not performed Work on the Property within the last twelve months.

8.7.2. Contractors must apply to the Architectural Control Committee for approval to be an Approved Contractor. The Architectural Control Committee shall determine the form of the application at its absolute discretion. The Architectural Control Committee shall designate a contractor as an Approved Contractor at its sole discretion. If the Architectural Control Committee has limited the number of Approved Contractors overall or for a type of Work to be performed, it may deny an application to be an Approved Contractor solely on the basis that the maximum number of Approved Contractors has been reached.

8.7.3. Notwithstanding any other provisions in this Section 8.7, during the Development Phase, Declarant shall have the right, at its sole discretion, to limit the total number of Approved Contractors, the number of Approved Contractors for a type of Work to be performed, or both; to designate a licensed contractor as an Approved Contractor without the need for the licensed contractor to apply to the Architectural Control Committee for approval; and to remove the Approved Contractor designation from a licensed contractor previously designated as an Approved Contractor. Declarant may exercise these rights to create, and periodically update, an

exclusive list of Approved Contractors, in which case no other licensed contractors may be designated as Approved Contractors until the Declarant determines otherwise.

8.7.4. An Approved Contractor must execute a contractor agreement in the form promulgated by the Architectural Control Committee for any Work the Approved Contractor undertakes on the Property. The contractor agreement shall include a release of all claims against the Declarant, Declarant's designee, the Association, and the Architectural Control Committee in connection with this Section 8.7 and an obligation on the part of the Approved Contractor to indemnify, hold harmless, and defend the Declarant, Declarant's designee for approvals, the Association, and the Architectural Control Committee from all claims and liens arising by, through, or under it in connection with the Work.

8.7.5. Each Lot Owner shall indemnify, hold harmless, and defend the Declarant, Declarant's designee for approvals, the Association, the Architectural Control Committee, the Trustees, and the members of the Architectural Control Committee against any claim made by any Person, including such Lot Owner, relating to or challenging the enforceability of this Section 8 with respect to Work on such Owner's Lot.

8.7.6. The covenant and restrictions set forth in this Section 8.7 shall run with the land and be binding on each successor Owner of each Lot. Declarant may enforce the covenant and restrictions by specific performance.

8.7.7. To secure performance of this covenant and these restrictions, Declarant shall have and is hereby granted a first priority lien against the Lot in the amount of the Lot Premium. The lien for the Lot Premium is not subject to any homestead exemption which may be claimed in the Lot by the Owner. The Lot Premium represents the increased purchase price Declarant would charge for the Lot but for this covenant and restriction. The Lot Premium is intended to compensate Declarant for the portion of the value of the Lot and adjoining Lots that Declarant will lose if this covenant and restrictions are violated and unqualified contractors perform Work within the Property. In the event of a breach of this covenant and these restrictions by the Owner, Declarant may foreclose such lien as a mortgage in order to collect the Lot Premium. The Owner shall be personally obligated to pay the Lot Premium and shall be deemed to have assumed and agreed to pay the Lot Premium by taking title to the lot.

8.8 Work by Owner. No Owner shall be permitted to perform Work on a Home or Lot without using an Approved Contractor.

9. Membership in Association; Voting Rights.

9.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another Person.

9.2 Voting Rights. The Association shall have two (2) classes of voting Members;

9.2.1. Class A Members. All Members shall be Class A Members except the Declarant, which shall be a Class B Member as set forth below.



Except as set forth in Section 4.3.2, Class A Members are entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an interest in any Lot, the group of such Persons shall constitute one (1) Class A Member with one (1) vote. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. A vote cast at any Association meeting by any Person owning an interest in a Lot, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another Person owning an interest in the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

9.2.2. Class B Member. The Class B Member is the Declarant. The Class B Member is entitled to three (3) votes for each Lot which the Declarant owns. The Class B Membership of the Declarant shall cease as of the end of the Development Phase; provided, the Declarant shall thereafter be a Class A Member with respect to any Lot of which it is the Owner.

9.3 Board of Trustees Acts for Association. Except as limited in this Declaration or the Association Bylaws, the Board of Trustees acts in all instances on behalf of the Association.

10. Operation of Association; Budgets; Assessments.

10.1 Creation of Association. The Association exists as a nonprofit corporation organized under the Utah Revised Nonprofit Corporation Act, Utah Code § 16-6a-101 *et seq.* The Association is governed by its Governing Documents.

10.2 Trustees. There shall be three (3) Trustees of the Association. During the Development Phase the Declarant shall appoint all three (3) Trustees. After the end of the Development Phase a majority of the Owners of Lots shall elect and appoint the Trustees, which shall thereafter be vested with the powers described in this Declaration and shall have jurisdiction over all of the Property subject to these restrictions, covenants and conditions.

10.3 Books, Records, and Audit. The Association shall maintain current copies of this Declaration, its Articles and Bylaws, the Rules, minutes of the meetings of the Architectural Control Committee and other similar documents, as well as its own minute, books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

10.4 Creation of Lien; Personal Obligation for Assessment. The Declarant and each subsequent Owner of any Lot by acceptance of a deed or otherwise acquiring title to the Lot, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay the Assessments imposed by the Association and interest thereon including, without limitation, costs of collection and a reasonable

attorney's fee, as provided in this Declaration. All such Assessments and other amounts shall be:

10.4.1. A charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or amount is charged; and

10.4.2. The personal obligation of: (i) the Person who was the Owner of such Lot at the time when the Assessment feel due; and (ii) successors-in-title who took title to such Lot when Assessments were due and payable

10.4.3. In the event a Lot is owned by more than one (1) Person, each such Person shall be jointly and severally liable to pay such Assessment.

10.5 Purpose of Assessments. The Assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the Common Area. The Assessments must provide for but are not limited to: the payment of taxes on the Common Areas and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Areas; the payment of administrative expenses of the Association; insurance deductible; the establishment of a reserve account for repair, maintenance and replacement of the improvements to the Common Areas which must be replaced on a periodic basis; and other amounts required that the Trustees shall determine to be necessary to meet the primary purposes of the Association. Assessments may be billed monthly, quarterly or annually as the Association determines.

10.6 Budgets; Permitted Increases in Assessments. The Trustees shall promulgate a Budget prospectively for each calendar year based upon the anticipated expenses of the Association. At least annually the Trustees shall prepare and adopt a Budget for the Association and the Trustees shall present the Budget at a meeting of the members. A Budget presented by the Trustees is only disapproved if member action to disapprove the Budget is taken in accordance with the limitations under Section 215 of the Association Act.

10.6.1. Failure to promulgate a Budget shall not constitute a waiver by the Association of the right to collect Assessments or a basis by any Member to refuse to pay Assessments.

10.6.2. If a Budget is disapproved under Section 215 of the Association Act, the Budget that the Association last adopted, and which was not disapproved by Owners, continues as the budget until and unless the Trustees present another Budget to the Owners and which other Budget is not disapproved.

10.7 Special Assessments for Capital Improvements. In addition to other authorized Assessments, the Association may levy special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such special Assessment may be levied against the entire membership if such special Assessment is for common expenses. Special Assessments shall be payable in such manner and at such times as determined by the Trustees and may be payable in installments extending beyond the fiscal year in which the special Assessment is approved. Special Assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, improvement, repair or replacement of property

owned or maintained by the Association, including without limitation Common Area, fixtures and personal property related thereto. Special Assessments must have the assent of at least fifty percent (50%) of the votes of the quorum of Members, voting in person, by ballot, or by proxy, at a meeting duly called for this purpose.

10.8 Individual Assessments for Particular Lots. A individual Assessment may be levied against a particular Lot and its Owner for: (a) costs incurred in bringing the Owner or the Owner's Lot into compliance with the provisions of the Association's Governing Documents; (b) the amount owed to the Association as a result of a repair of the damage to the Common Area pursuant to Section 3.7 of this Declaration or any other charge designated as pertaining to an individual Lot in the Governing Documents; (c) fines, late fees, collection charges, and interest allowed under the Governing Documents and Association Act; and (d) attorney fees, costs and other expenses related to any of the aforementioned charges.

10.9 Assessment on Unimproved Lots. In addition to the annual Assessments, special Assessments, and any other Assessment or charge authorized by the Association's Governing Documents, each Unimproved Lot shall be subject to, and the Owner of that Lot shall pay, an annual non-building Assessment of One Thousand Two Hundred Dollars (\$1,200.00) per year to defray, in whole or in part, the cost of security and maintenance for such Unimproved Lot.

10.10 Uniform Rate of Assessment; Periodic Assessments. Assessments must be fixed at a uniform rate for all Lots; provided, however, that Assessments shall not accrue against the Declarant or Lots owned by the Declarant.

10.11 Date of Commencement of Annual Assessments; Due Dates. The Assessment provided for in this Declaration shall commence to accrue on the first day following conveyance to a purchaser.

10.11.1. The first Assessment shall be adjusted pro-rata according to the number of months remaining in the calendar year.

10.11.2. At least thirty (30) days prior to the commencement of each new Assessment period, the Trustees shall send or cause to be sent a written notice of the annual Assessment to each Owner subject thereto. Delivery of notice shall not be a condition or requirement to validity of the Assessment.

10.11.3. The Assessment due dates shall be established by the Trustees.

10.11.4. The Trustees shall prepare a roster of the Lots and the Assessments applicable thereto at the same time that it shall fix the amount of the Assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of Assessments and shall allow inspection of the roster by any Member at reasonable times.

10.11.5. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessment on a specified Lot has been paid. Such certificates, which properly issued, shall be conclusive evidence of the payment of any Assessment or fractional part thereof which is therein shown to have been paid.

10.12 Effect of Non-Payment of Assessment: Remedies of Association.

10.12.1. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall be delinquent and the unpaid balance of such Assessment or installment shall bear interest from the due date at the rate of fifteen percent (15%) per annum (or such lesser rate as the Trustees shall set by resolution) until paid in full. In addition, a late fee of \$50.00 for each delinquent installment shall be imposed.

10.12.2. There shall be added to the amount of any delinquent Assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

10.12.3. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if such Association were beneficiary under a deed of trust. The Declarant, and each Owner of a Lot, hereby conveys and warrants pursuant to Utah Code §§ 57-1-20 and 57-8a-302 to the Association's attorney as, as trustee, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration. An Owner's acceptance of an interest in a Lot in the Project constitutes a simultaneous conveyance of the Lot in trust, with power of sale to the trustee for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

10.12.4. The Trustees may, in the name of the Association may pursue one or more of the following remedies:

10.12.4.1. bring an action at law against the Owner personally obligated to pay any such delinquent Assessment without waiving the lien of Assessment;

10.12.4.2. foreclose the lien against the Lot accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law;

10.12.4.3. restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member as set forth in Section 3.5.3; or

12.12.4.4. pursue any other remedy available at law or equity.

10.12.5. The pursuit of one of the remedies set forth in Section 10.12.4 shall not constitute an election of remedies, and the Association may pursue more than one of the remedies simultaneously or, after pursuing one remedy, may abandon such remedy and instead pursue another remedy.

10.12.6. No Owner may avoid or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the common areas or by abandonment of the Lot.

10.13 Priority of Association's Lien. The Association has a lien on each Lot for all Assessments, which include, but are not limited to, interest, collection charges, late fees, fines, attorney fees, court costs, and other costs of collection. This lien was perfected as of the date of the recording of the Enabling Declaration. Pursuant to Section 301(4) of the Association Act, the Association's lien has priority over each other lien and encumbrance on a Lot with the exception of: (a) a lien or encumbrance recorded before the Enabling Declaration was recorded; (b) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot. The Association's lien is not subject to any homestead exemption which may be claimed in the Lot by the Owner.

10.14 Lots Owned by Class B Member Exempt from Assessments. Notwithstanding any other provision of this Declaration, annual or special assessment shall not be levied or assessed against the Class B shares.

10.15 Reinvestment Fee Covenant. In addition to all other Assessments and upon the conveyance of a Lot there shall be one (1) reinvestment fee assessment charged to the buyer or seller, as the buyer and seller may determine.

10.14.1 The Association's Trustees may determine, pursuant to resolution, the amount of the reinvestment fee Assessment charged for: common planning, facilities, and infrastructure; obligations arising from an environmental covenant; community programming; open space; recreational facilities and amenities; or other Association expenses as provided for in Utah Code § 57-1-46(1)(a).

10.14.2 No reinvestment assessment shall exceed one-half percent (0.5%) of the fair market value of the Lot, plus all improvements. When the seller is a financial institution, the reinvestment assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred and Fifty Dollars (\$250.00). The Association may assign such charges or costs directly to the Association's manager.

10.14.3 A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced upon: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; or (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution.

10.14.4 The Association shall have authority to record any notice required by law to effectuate this provision.

## 11. Use of Amenities.

11.1 Public Park. The Project has, or will have, a 1.50 acre public park with a trail system which separates Palisades at Snow Canyon from the adjoining project to the East Palisade Park. This park will have benches, picnic tables and will be landscaped with drought tolerant desert plantings.

11.2 Additional Amenities. The Declarant may develop additional parks, clubhouses, recreational or social facilities or other amenities (the "Additional Amenities") outside of the Property and, at its sole discretion, may make such Additional Amenities available to the Owners on such terms and conditions, and for such charges or payments, as Declarant may establish. Declarant reserves the right to amend this Declaration at any time without the consent of any Owner, Member or other Person to make such Additional Amenities available; provided, Developer may offer such Additional Amenities to any Owner or Member but may not force any Owner or Member to use such Additional Amenities or, unless such Owner or Member uses the Additional Amenities, to pay for any of the cost of the Additional Amenities.

12. Duration: Enforcement: Amendment.

12.1 Duration of Restrictions. The covenants and restrictions contained in this Declaration shall run with and bind the land, subject to any future amendments and any amendment terminating this Declaration pursuant to Section 12.2.

12.2 Amendment. Until the expiration of the Development Phase, the Declarant shall have the right to amend, revise, and modify this Declaration, the Plat, the Bylaws, and the Rules in any way, and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners. Any such amendment to this Declaration or the Bylaws shall be effective upon the recordation by the Declarant of an amendment with the Washington County Recorder's office. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein, including all Owners. After termination of the Development Phase, except as otherwise provided in this Declaration, Owners holding not less than sixty-seven percent (67%) of the total votes of the Association must approve any amendment to the Declaration. Notwithstanding the foregoing, the Board of Trustees may, without the approval of the Owners, amend this Declaration to conform it to requirements in state or federal law.

12.3 Additional Property. The Project has been expanded from time to time. The Project may be further expanded by the Declarant. Additional real property may be subjected to these covenants, conditions and restrictions by the Declarant or its successors or assigns on such terms and conditions as shall be set forth in the amendment to this Declaration which is executed to subject such additional land to this Declaration. In the amendment to the Declaration, Declarant shall indicate its intent to have such real property subject to this Declaration on the plat of such property, or by recording an additional set of covenants, and thereafter such additional property shall be considered as part of the Property in all respects, and lots into which such additional property is subdivided shall constitute Lots under this Declaration. The amendment may specify that different development covenants, restrictions and standards apply to the Lots in future phases. This right of the Declarant to include additional lands to this Declaration shall be assignable to one or more assignees and such assignees shall act as Declarant for purposes of Section 12.2.

13. Notices and Communications. The Association may provide notice to and communicate with Owners by electronic means, including text message, email, or the, except that an Owner may, by written demand, require the Association provide notice to

that Owner by mail. The Association may further utilize online, telephone, electronic, email, remote, and other means of technology for voting and obtaining Owner's consents to the extent not prohibited by the Association Act and the Utah Revised Nonprofit Corporation Act. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

13.1 When sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

13.2 When sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

13.3 When placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (i) when received; (ii) six (6) days after it is mailed; or (iii) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

13.4 When hand delivered, the notice is deemed effective immediately upon delivery;

13.5 When delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the owner; or

13.6 When notice is given orally, the notice is deemed effective when communicated.

14. Violation Constitutes Nuisance. Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant, the Association, or a Lot Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive.

15. Enforcement. Each and all of the restrictions, covenants, and conditions contained in this Declaration is and are for the benefit of the Declarant, the Association and of the Lot Owner or Owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant, the Association, or a Lot Owner or Owners; provided, however, that no such breach shall affect or impair the lien of any bona fide Mortgage which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. In accordance with Section 208 of the

Association Act, the Association may levy a fine or penalty against a Lot Owner for a violation of the Association's Governing Documents. The Rules may set forth the amount of such fines and the procedure for levying fines. All attorney's fees and costs incurred in any such action and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be an individual Assessment of said Lot Owner under Section 10.8, enforceable at law, until such payment is made in full.

16. Right to Enforce. The provisions contained in these covenants shall bind and inure to the benefit of and be enforceable by the Declarant, the Association or a Lot Owner or Owners, and each of their legal representative, heirs, successors and assigns, and failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

17. Assignment of Power and Authority of Declarant. Any and all rights and power of the Declarant contained in this Declaration may be delegated, transferred or assigned.

18. Reserve Fund. The Trustees shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Trustees may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Trustees shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an owner upon request. In formulating the Budget each year, the Trustees shall include a reserve line item in an amount required by the Governing Documents, or, if the Governing Documents do not provide for an amount, the Trustees shall include an amount it determines, based on the reserve analysis, to be prudent.

18.1 The Association shall maintain a reserve fund separate from other Association funds.

18.2 Unless a majority of the Association owners vote to approve the use of reserve fund money for that purpose, the Trustees may not use money in a reserve fund: (i) for daily maintenance expenses; or (ii) for any purpose other than the purpose for which the reserve fund was established.

19. Eminent Domain. If part of the common area is taken by eminent domain: (a) the entity taking part of the common area shall pay to the Association the portion of the compensation awarded for the taking that is attributable to the common area; and (b) the Association shall equally divide any portion of the award attributable to the taking of a limited common area among the owners of the lots to which the limited common area was allocated at the time of the taking. An Association shall also submit for recording to each county recorder the court judgment or order in an eminent domain action that results in the taking of some or all of the common area.

20. Construction and Severability. All of the restrictions, covenants and conditions contained in this Declaration shall be construed together. Invalidation of any one of these said restrictions, covenants, conditions, provisions, or any part thereof shall



not affect the enforce ability or applicability any of the remaining restrictions, covenants or conditions, provisions, or parts thereof.

21. Rules Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules, or other Governing Documents of the Association. If for any reason this Declaration does not comply with the Association Act, such noncompliance does not render a Lot or common area unmarketable or otherwise affect the title if the failure is insubstantial.

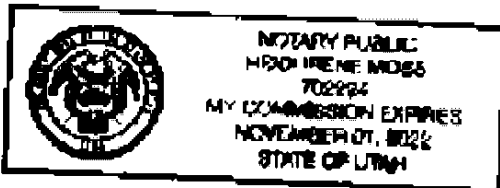
IN WITNESS WHEREOF, the Declarant has hereunto executed this Declaration as of the 2nd day of September, 2022.

ROCKY CANYON PROPERTIES,  
LLC, a Utah limited liability  
company

By: [Signature]  
Name: Lisa Saidi  
Its: Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

On the 2nd day of September, 2022, personally appeared before me Lisa Saidi, who being personally known to me or satisfactorily proved to me, and who being by me duly sworn did say that he/she is the Manager of Rocky Canyon Properties, LLC, a Utah limited liability company, and that he/she executed the foregoing Declaration on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said company or resolution of its managers, and he/she acknowledged before me that such company executed the same for the uses and purposes stated therein.



[Signature]  
Notary Public

Dated Sept. 2, 2022  
My commission Expires  
Nov. 1, 2022

# EXHIBIT “A”

## Legal Description

**Palisades at Snow Canyon Phase 1 2nd Amended, more particularly described as:**

Lots 101 through 126, together with all Common Area, the Palisades at Snow Canyon Phase 1, 2nd Amended, according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-1-101 through I-PSC-1-126

**Amended Lot 108, the Palisades at Snow Canyon Phase 1 Second Amended; more Particularly described as:**

Lot 108, of the Amended Lot 108 the Palisades at Snow Canyon Phase 1 Second Amended Subdivision, according to the Official Plat thereof on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No: I-PSCA-1-108

**Palisades at Snow Canyon Phase 2 Amended and Extended, more particularly described as:**

Lots 320 through 348 and Lots 357, 358, and 363 through 367, together with all Common Area, the Palisades at Snow Canyon Phase 2 Amended and Extended, according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-2-320 through I-PSC-2-348; I-PSC-2-357, I-PSC-2-358 and I-PSC-2-363 through I-PSC-2-367

**Palisades at Snow Canyon Phase 3, more particularly described as:**

Lots 301, 349, 350 and 351, together with all Common Area, Palisades at Snow Canyon Phase 3, according to the Official Plat thereof on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-3-301, I-PSC-3-349 through I-PSC-3-351

**Palisades at Snow Canyon Phase 4, more particularly described as:**

Lots 302 through 310, together with all Common Area, Palisades at Snow Canyon Phase 4, according to the Official Plat thereof on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-4-302 through I-PSC-4-310

**Palisades at Snow Canyon Phase 5, more particularly described as:**

Lots 311 through 319; Lots 353 through 356 and Lots 359 through 362, together with all Common Area, Palisades at Snow Canyon Phase 5, according to the Official Plat thereof, on file In the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-5-311 through I-PSC-5-319; I-PSC-5-353 through I-PSC-5-356 and I-PSC-5-359 through I-PSC-5-362

**Palisades at Snow Canyon Phase 6 Amended, more particularly described as:**

Lots 201 through 207; Lots 210 through 220; and Lots 222, 224 and 226, together with all Common Area, Palisades at Snow Canyon Phase 6, Amended, according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-6-201 through I-PSC-6-207; I-PSC-6-210 through I-PSC-6-220; I-PSC-6-222; I-PSC-6-224 and I-PSC-6-226

**Palisades at Snow Canyon Phase 6 Amended Lot 208 Amended, more particularly described as:**

Lot 208, the Palisades at Snow Canyon Phase 6 Amended, Lot 208 Amended, according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSCB-6-208

**Palisades at Snow Canyon Phase 7, more particularly described as:**

Lots 227 through 234, 236 and 238 together with all Common Area, the Palisades at Snow Canyon Phase 7, according to the Official Plat thereof, on file in the office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-7-227 through I-PSC-7-234; I-PSC-7-236; I-PSC-7-238

**Palisades at Snow Canyon Phase 7 Amended Lots 235 & 237 Amended, more particularly described as:**

Lots 235 and 237, together with all Common Area, the Palisades at Snow Canyon Phase 7 Lots 235 & 237 Amended, according to the Official Plat thereof, on file in the office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSS-7-235; I-PSS-7-237

**Palisades at Snow Canyon Phase 8, more particularly described as:**

Lots 1 through 31 and Lot AM, together with all Common Area, the Palisades at Snow Canyon Phase 8, according to the Official Plat thereof, on file in the office of the Washington County Recorder, State of Utah.

Tax ID No's: I-PSC-8-1 through I-PSC-8-31; I-PSC-8-AM

# EXHIBIT “B”

## Definitions

For purposes of this Declaration, the following capitalized terms shall have the meanings set forth:

“Additional Amenities” is defined in Section 11.2.

“Assessment” means the charges assessed with respect to each Lot and Owner pursuant to Section 10.

“Approved Contractor” is defined in Section 8.7.

“Architectural Control Committee” is defined in Section 5.1.

“Architectural Guidelines,” “Design Guidelines,” or “Guidelines” mean the architectural and design criteria, restrictions, and guidelines adopted by the Association, Board of Trustees, or Architectural Control Committee. These are considered a subset of the Association’s Rules.

“Association” means Palisades at Snow Canyon Homeowners Association, a Utah non-profit corporation, its successors and assigns.

“Association Act” means the Community Association Act, Utah Code § 57-8a-101 *et seq.*, as amended and as may be amended from time to time.

“Budget” means a budget for the operation of the Association and the maintenance and repair of the Common Area to be promulgated in accordance with Section 10.6

“Common Area” means that portion of the Property shown on the plat as common areas including, without limitation, landscaping along Park Avenue, any entry features constructed on the Property and the fence along the perimeter of the Property. Common Area is dedicated to the common use and enjoyment of the Owners in accordance with the terms and conditions set forth in this Declaration, and shall be owned by the Association.

“Declarant” means Rocky Canyon Properties, LLC.

“Declaration” means this instrument, and any amendments thereto from time to time pursuant to Section 12.2.

“Developer” means the Declarant and, as required by the context of the Declaration, any of Declarant’s predecessors, successors or assigns, and Kingsbury.

“Development Phase” means the period of time that commences upon the date of this Declaration and continues until the first to occur of:

- a. The first day Declarant ceases to own at least one (1) Lot for a consecutive period of six years (72 months) ; or

b. The date Declarant records a notice in the Official Records of Washington County, Utah terminating the Development Phase.

“Drainage Improvements” is defined in Section 3.1.

“Easement Areas” means the area along the boundaries of each Lot, as indicated on the Plat, which is subject to the easements pursuant to Section 2.2; for installation, operation and maintenance of utilities and drainage lines, pipes and similar facilities.

“Enabling Declaration” is defined in Recital A.

“Family” means, with respect to a designated Owner or Resident, natural Persons related to such Owner or Resident by blood or marriage, by legal adoption or by operation of law.

“Final Approval” or “Finally Approve” is defined in Section 5.5.

“Governing Documents” means a written instrument by which the Association may exercise powers or may manage, maintain, or otherwise affect the property under the jurisdiction of the Association, and which written instruments include: the Declaration, Plat, articles of incorporation, bylaws, and Rules, including the Architectural Guidelines.

“Governmental Authorities” means all governmental or quasi-governmental units, commissions, councils, boards, agencies, districts, staffs or similar bodies.

“Governmental Requirements” means all statutes, ordinances, regulations, rules, requirements, policy statements, regulations similar pronouncements and laws established by Governmental Authorities.

“Home” means a detached single-family dwelling or structure designed and used for occupancy by a single family and located on a Lot or, but only in accordance with Section 4.3.2, adjacent Lots.

“Kingsbury” is defined in Recital D.

“Lot” means a separately numbered and individually described tract of land shown and labeled on the Plat as a Lot.

“Lot Premium” means Twenty-five Thousand Dollars (\$25,000.00).

“Member” means any Person who holds membership in the Association As set forth in Section 9, every owner is a Class A Member, and the Declarant is a Class B Member.

“Members” means the aggregate of all of the Persons who are a Member.

“Mortgage” means a mortgage, deed of trust or other security agreement which constitutes a lien against a Lot and which secures the obligation to repay a loan or advance.

“Mortgagee” means a mortgage, beneficiary, secured party or other Person whose loan or advance is secured by a Mortgage.

“Owner” means the entity, Person, or group of Persons owning fee simple title to any Lot or who has closed on a contract purchase of a Lot. Regardless of the number of Persons participating in ownership of each Lot, the group of those Persons shall be treated as one “Owner”. Notwithstanding any interpretation of law, “Owner” shall not include a

Mortgagee unless and until such Mortgagee acquires fee simple title to the Lot at a foreclosure sale, trustee's sale or by deed-in-lieu of foreclosure.

“Person” means a natural person, a legal entity or a trust.

“Plat” or “Plats” mean the subdivision plat or plats recorded in the records of the County Recorder of Washington County, Utah, including the Phase 1 Plat, Amended Phase 1 Plat, Second Amended Phase 1 Plat, Phase 2 Plat, Amended and Extended Phase 2 Plat, Phase 3 Plat, Phase 4 Plat, Phase 5 Plat, Phase 6 Plat, Amended Phase 6 Plat, Phase 7 Plat, Phase 8 Plat (which Plats are further defined and identified in the Recitals), and all amendments and supplements thereto, in connection with the “Palisades at Snow Canyon” Project.

“Predecessor Declarant” is defined in Recital A.

“Project” means the Property and all structures and improvements thereon including the Lots, Homes, and Common Area.

“Property” means that certain real property described on Exhibit “A”, and such additional property as may hereafter be subjected to this Declaration pursuant to Section 12.3.

“Resident” means a Person who occupies a Home on a long-term basis who is not an Owner. Typically, a Resident will be a tenant of the Owner.

“Roads” means all streets and right-of-ways for vehicular passage, and all curbs, gutters, Sidewalks and similar improvements located in or adjacent to such streets, all as set forth on the Plat.

“Rules” are defined in Section 3.3.

“Trustees” means the governing body of the Association, which shall be constituted in the manner set forth in Section 10.2.

“Unimproved Lot” is defined in Section 4.17.

“Work” is defined in Section 5.1.