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Restrictive Page 1 of 71  
Gary Christensen Washington County Recorder  
08/21/2022 10:49:32 AM Fee \$ 40.00  
By COLE WEST HOME

**WHEN RECORDED, RETURN TO:**  
Cole West Home, LLC  
Attn: Legal Department  
1222 W. Legacy Crossing Blvd., STE 6  
Centerville, UT 84014



Affecting Parcel Number(s): ~~W-4-2-6-110~~

W-4-2-7-100

# MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COTTONWOOD COMMUNITY ASSOCIATION

A Master Planned Community  
in  
Washington County

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**MASTER DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR COTTONWOOD COMMUNITY ASSOCIATION**

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD COMMUNITY ASSOCIATION** (“Master Declaration”) is adopted by **COLE WEST HOME, LLC**, a Utah limited liability corporation (the “Declarant”) and **THE STATE OF UTAH, ACTING THROUGH THE SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION** (“SITLA”).

**RECITALS**

A. Declarant and/or SITLA are the owners of certain real property in Washington County, which is more particularly described on Exhibit “A” attached hereto and made a part hereof. By executing and recording this Master Declaration, the undersigned declare that the property described in Exhibit A, and any additional property made subject to this Master Declaration in the future by amendment or supplement, is subject to the terms, covenants, conditions and restrictions set forth in this Master Declaration.

B. As the development of the Project proceeds, Declarant intends (but shall not be obligated) to record various subdivision plats; to dedicate portions of the Project to the public for streets, parks, roadways, drainage, flood control and general public use; to sell Parcels and Lots to various builders and users; and to record Supplemental Declarations to annex additional land into the Project and subject such properties to this Master Declaration; designate the purposes for which certain properties may be used; and may set forth additional covenants, conditions, and restrictions applicable to certain properties within the Project.

C. Declarant has formed the Cottonwood Community Association which shall (1) own, manage, and/or maintain the Common Areas and certain other areas in the Project; (2) levy, collect and disburse the Assessments and other charges imposed herein; (3) as the agent and representative of Owners, enforce the use restrictions and other provisions of this Master Declaration; and (4) do such other things as are provided for in this Master Declaration.

D. Declarant is the lessee of certain property pursuant to the Development Lease and has entered into this Master Declaration pursuant to the requirements of Section 5.2(F) therein. SITLA is joining in this Master Declaration and consents to subjecting its property to its terms and restrictions.

E. Declarant intends that all property within the Project shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions in this Master Declaration, which: (1) are for the purpose of protecting the value, desirability, attractiveness, and natural character of the Project; (2) shall run with the land; (3) shall be binding upon all parties having any right, title, or interest in any part of the Project; and (4) shall inure to the benefit of all parties having any right, title, or interest in any part of the Project, and their successors and assigns.

F. It is intended that this Master Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Master Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

G. Portions of the Project may be developed as detached single family, attached townhomes, or condominium units. The Declarant may form community or condominium sub-associations with additional covenants, conditions, and restrictions to govern specific neighborhoods and/or product types. However, nothing in this Master Declaration shall require the creation of a community or condominium sub-association. The powers, authority, and jurisdiction of any such sub-association shall be subordinate to that of the Association.

NOW, THEREFORE, DECLARANT declares, covenants and agrees as follows:

#### ARTICLE I - DEFINITIONS

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

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

1.2 **“Additional Land”** shall mean without limitation, any parcel of land that is annexed into the Project by the Declarant.

1.3 **“Allocated Interest”** shall mean the interest of each Lot Owner applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. The Allocated Interest of each Lot shall be calculated as set forth in Section 3.8.

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

1.5 **“Assessment”** shall mean any monetary charge imposed or levied on an Owner by the Master Association as provided for in this Declaration.

1.6 **“Benefit Assessment Area”** shall mean a geographical area in the Project in which the Lots within that area receive special benefits or services from the Master Association that the Master Association does not provide to all Lots within the Project.

1.7 **“Board Member”** or **“Director”** shall mean a duly-qualified and elected or appointed member of the Board of Directors.

1.8 **“Board of Directors”** or **“Board”** shall mean the governing board with primary authority to operate and manage the affairs of the Master Association.

1.9 **“Builder”** shall mean a Person (other than Declarant or Declarant affiliate) who acquires Lots for the purpose of constructing Dwellings, apartments, or commercial improvements for later sale to third parties, or who purchases unimproved land within the Project for further subdivision, development, and resale to the public in the ordinary course of its business. Builders have the same privileges and responsibilities as Owners during the time that they own Lots for construction and resale, including the privileges of membership in the Master Association. In addition, to further the purposes of this Declaration and to enhance the development of specific Neighborhoods, Declarant may extend any of the rights and exemptions it has reserved under this Declaration with respect to development, construction, marketing, and sale of property in the Project to such Builders as it may designate from time to time. Declarant shall have the sole discretion to determine if a Person or entity qualifies as a Builder and is entitled to the Builder rights and exemptions as set forth in this Declaration.

1.10 **“Bylaws”** shall mean the Bylaws of the Master Association attached as Exhibit B and all amendments thereto. No amendment to the Bylaws shall be effective until it is recorded.

1.11 **“Commercial Lot”** shall mean a Lot or parcel which is intended for commercial use and occupancy as designated on the Plat, in a Supplemental Declaration, or by Declarant. All buildings and improvements on Commercial Lots shall be constructed in accordance with the restrictions and conditions set forth herein. Although a Commercial Lot shall be a single Lot, the number of votes and assessments shares for a Commercial Lot shall be equal to its Allocated Interest.

1.12 **“Common Area”** shall mean the real and personal property for the common use and enjoyment of the Owners not dedicated to a municipality and shall include, but not be limited to: (a) the areas designated as Common Area on the recorded Plats of the Project, and any improvements thereon, (b) open space lots not privately held; (c) trails, boundary fences, sidewalks, streetlights, parking areas, or other improvements located within the designated Common Areas on the Plats; (d) structures built within the Common Areas on the Plats including any clubhouse, pool, playground, tot lots, sports courts, or other common amenities or facilities; (e) all Limited Common Areas; (f) private roadways, lanes, alleys or cul-de-sacs within the Project; (g) roundabouts, park strips, trails, canals, or other areas owned by a municipality that the Association is required to maintain; and (h) all other parts of the Project outside of the Lots not dedicated to the public or which are necessary or convenient to the Project’s existence, maintenance, safety, or normally in common use. The Common Areas and facilities may be owned by the Master Association, or otherwise as the Declarant so determines.

Common Area shall not include (i) any roads and associated utilities dedicated to and accepted by a municipality; (ii) any roads or facilities owned or controlled by a Neighborhood Association; (iii) any open space and/or parks dedicated to and accepted by a municipality; (iv) any open space, parks, or other landscaped areas owned or controlled by a Neighborhood Association.

1.13 **“Common Expenses”** shall mean the actual and estimated costs incurred for the general benefit of all Owners including, but not limited to: (a) maintenance, management, operation, repair, and replacement of the Common Area which is maintained by the Master Association; (b) maintenance, repair, and replacement of those aspects of the Lots which are maintained by the Master Association; (c) management and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys, consultants, and employees; (d) extermination, security, gardening, common utilities, and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) principal and interest payments for bonds or loans that the Master Association has the obligation to repay; (h) other miscellaneous charges incurred by the Master Association as provided for or allowed in the Act or the Governing Documents; and (i) any other expenses of the Master Association arising

from the operation of the Master Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.14 **“Control Period”** shall mean the period of time during which the Declarant may act as the Board of Directors or appoint Board Members. Such period of time commenced on the date the Enabling Declaration was recorded and shall terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots, all of the Additional Land that may be annexed, and all land that is subject to the Development Lease have been conveyed to purchasers other than a Declarant or its successors, assigns, and affiliates; or (ii) the Declarant executes and records a written waiver of its right to control the Master Association. The Special Declarant Rights contained within this Declaration may last beyond the Control Period for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.15 **“Declarant”** shall mean Cole West Home, LLC, a Utah limited liability company, or its successors or assigns. The Declarant may assign all or part of its rights hereunder. The term Declarant may also include SITLA, but only as specifically provided in Section 3.11.

1.16 **“Declaration”** shall mean this Master Declaration of Covenants, Conditions and Restrictions for Cottonwood Community Association, including all attached exhibits, which are incorporated by reference, and any and all amendments to this Declaration.

1.17 **“Design Guidelines”** shall mean those requirements governing the site location and architectural design of Dwellings, buildings, and other structures and improvements within the Project as adopted by the Board or DRC as provided herein.

1.18 **“Design Review Committee”** or **“DRC”** shall mean the Cottonwood Community Association Design Review Committee as set forth herein.

1.19 **“Development Lease”** means Development Lease Agreement No. 1075, dated October 29, 2016, between Declarant’s predecessor-in-interest Jack Fisher Construction of Southern Utah, LLC and SITLA, as it may be amended, supplemented or extended from time to time. Declarant has been assigned all rights and obligations as Lessee under the Development Lease. Upon termination of the Development Lease prior to completion of the Project, SITLA, at its sole option, shall have the right to become the Declarant and exercise all such rights and obligations set forth herein.

1.20 **“Dwelling”** shall mean any residential structure built or to be built on any Lot or unit within the Project, including the attached or detached garage. Dwellings shall include all residences in the Project including apartment units, townhome units, condominium units, Live-Work Units, and detached homes.

1.21 **“Election District”** shall mean the geographical area which may constitute any portion or portions of the Project from which the Members located within that geographical area shall elect one or more Board Members.

1.22 **“Exempt Lot”** shall mean a Lot which is not subject to one or more assessment types including, but not limited to, regular, special, Benefit Assessment Area, individual, and reinvestment fee assessments. During the Control Period, the Declarant shall have the authority to designate Exempt Lots in its sole discretion. Exempt Lot designations may be for any period of time up to the date of transfer of title to third-party consumers from Declarant or Builders. All Lots owned by SITLA, Declarant, or Declarant affiliates shall be deemed Exempt Lots unless Declarant explicitly

designates otherwise. Declarant may designate Lots owned by Builders or Owners as Exempt Lots under the terms and conditions agreed upon by Declarant and each Builder or Owner and Declarant shall have no requirement or obligation to treat various Builders' Lots or groups of Lots similarly. The Association may, but shall not be required to, adopt a resolution that identifies the Exempt Lots and describes the terms and exemptions that each Lot or group of Lots is entitled to receive.

1.23 **"Governing Documents"** shall mean the Declaration, Plat, Bylaws, Rules, Articles, Design Guidelines, Board resolutions, and any other written instrument by which the Master Association may exercise power, manage, maintain, or otherwise affect the Project.

1.24 **"Lender"** shall mean a holder of a first mortgage or deed of trust on a Lot.

1.25 **"Limited Common Area"** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Lots to the exclusion of other Owners. Conveyance of a Lot includes the use of the Limited Common Area designated for the use of the Owner of the Lot. Whether or not indicated on the Plat, the Limited Common Areas shall include facilities appurtenant to the Lots including porches, balconies, driveways, parking lots, and portions of the Common Areas bounded by approved fences on the Lots. Limited Common Areas may also be assigned to all Lots within a Neighborhood Association or a Benefit Assessment Area generally, rather than to individual Lots. All installations or modifications of Limited Common Areas shall be approved by the Master Association and shall be subject to the provisions in this Declaration and the Design Guidelines. The Board shall have the power and discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

1.26 **"Live-Work Unit"** shall mean a Dwelling designated on the Plat, by the Declarant, or by the Master Association as a Dwelling that may conduct certain limited commercial activities in addition to residential occupancy.

1.27 **"Lot"** shall mean any numbered building lot, condominium unit, or parcel shown on the Plats within the Project. The term Lot as used in this Declaration shall include all separately owned and identified parcels of real property including but not limited to detached home lots, townhome lots, condominium units, multi-family lots, and Commercial Lots. The term Lot shall include any Dwelling, structure, or other improvement constructed thereon. With respect to Lots containing attached Dwellings, the Lot shall extend to the center of the Party Wall, which shall form the boundary of the Lots sharing that wall. Subject to dividing lines between Lots, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it: (1) is part of and an integral part of the Dwelling's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the structure); or (2) was constructed as part of the original construction of the Lot. Condominium unit boundaries shall be as set forth in the applicable Neighborhood Declaration.

1.28 **"Manager"** shall mean any entity or Person engaged by the Board of Directors to manage the Project.

1.29 **"Master Association"** or **"Association"** shall refer to the COTTONWOOD COMMUNITY ASSOCIATION, the membership of which shall include each Owner in the Project. The Master Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Master Association" as used in this Declaration shall refer to that entity or group.

1.30 **"Member"** shall mean and refer to a Lot Owner.

1.31 **“Neighborhood Association”** shall mean an independent homeowners association or condominium association comprised of Owners of Lots within the Project and created by the Declarant or the Master Association. Each Neighborhood Association shall be organized pursuant to Utah law and shall be subject to this Declaration. All Neighborhood Associations are subordinate to the Master Association and this Declaration.

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

1.32 **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Washington County Recorder; however, Owner shall not include a trustee for a deed of trust. Every Owner is automatically a Member of the Master Association. However, there shall be only one membership per Lot. Every Owner has a responsibility to comply with the Governing Documents. The term Owner shall not apply to SITLA and SITLA shall not be subject to the duties and obligations of Owners set forth herein, including but not limited to payments of assessments.

1.33 **“Party Wall”** shall mean a wall, including without limitation a foundation wall, that forms part of a Dwelling and is located on or adjacent to a boundary line between two or more attached Dwellings that are owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Dwellings as a structural partition wall. A Party Wall may be separated by a sound board or other component between two or more Dwellings.

1.34 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.

1.35 **“Plat”** shall mean, and refer collectively to all record of survey maps of the Cottonwood Community Project, recorded in the records of the Washington County Recorder and all amendments and supplements thereto, along with any plats for Additional Land annexed or to be annexed into the Project. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control. The Declarant shall have the right to annex property to the Project, record plats for the development of property within the Project, and amend all Project Plats during the Control Period in Declarant’s sole discretion.

1.36 **“Project”** shall mean the property described in Exhibit A and all land, structures, and improvements thereon including the Lots, roads, open spaces, Common Areas, and Limited Common Areas. The Project shall also include any Additional Land annexed into the Master Association and made subject to this Declaration.

1.37 **“Rules”** shall mean and refer to the rules and regulations adopted by the Board for the Master Association.

1.38 **“SITLA”** means The State of Utah, acting through the School and Institutional Trust Lands Administration, and its successors and assigns as the holder of the rights of the Lessor pursuant to the Development Lease

1.39 **“Supplemental Declaration”** shall mean a document recorded with the Washington



County Recorder by the Declarant or Master Association to make additional real property subject to the terms of this Declaration, or which withdraws real property from the restrictions of this Declaration.

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

## ARTICLE II - THE PROJECT

2.1 **Submission.** The real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant confirms that that the Project and any Lot or parcel of land within the Project shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute covenants running with the land and shall be binding upon and inure to the benefit of the Master Association, the Declarant, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Lot or parcel of property within the Project, such Owner consents to, and agrees to be bound by each and every Term and Condition in the Governing Documents.

2.2 **Purpose.** Declarant intends that this Declaration establish a governance structure and a system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the Project. The Master Association is intended to be an integral part of the Project as it will own, operate, and maintain various Common Areas and improvements and shall administer and enforce this Declaration and the other Governing Documents referenced in this Declaration for the common benefit of all Owners of the Project.

2.3 **Nature of the Project.** The Project is a mixed-use master planned community consisting of a mixed type of residential Lots and Dwellings along with recreational, civic, and commercial properties surrounded by open space and parks. There will also be landscaped areas, trails, private roads, sidewalks, and recreational amenities. The densities for the Project will be set forth on the Plat and may be further defined or clarified in development agreements with governmental authorities. The Project is subject to refinement by Declarant, or as required by local governmental ordinances and approvals.

2.4 **Project Name.** The Project is named “Cottonwood Community” and is located entirely in Washington County. The name used by the Declarant for the Project may be different than the names identified on development agreements and Plats. The Master Association and the Project are not a cooperative.

2.5 **Supplement and Exclusions to Declaration.** At any time during the Control Period, Declarant or its assigns may add or remove any real property to or from the terms of this Declaration by recording with the Washington County Recorder a Supplement or Exclusion to this Declaration which (i) describes such property, (ii) declares that such property is or is not subject to this Declaration, and (iii) is signed by Declarant.

## ARTICLE III - PROJECT STRUCTURE & ORGANIZATION

3.1 **The Declarant.** The Declarant shall mean Cole West Home, LLC, a Utah Limited Liability Company, and its successors and assigns. The Declarant has established the Project and has set forth a governance structure for the Project through the Governing Documents. The Declarant has reserved various rights in the Governing Documents with respect to the development and

administration of the Project. The Declarant may exercise these rights throughout the period of time that the Declarant or any of its affiliates own real property in the Project or has an unexpired option to expand the Project pursuant to the Governing Documents. The Declarant may assign its status and rights as the Declarant under the Governing Documents to any affiliate, or person who takes title to any portion of the property subject to this Declaration for the purpose of development and/or sale, but such assignment shall be subject to SITLA approval during the term the Development Lease remains in effect.

**3.2 The Master Association.** The Declarant has established the Cottonwood Community Association as the primary entity responsible for administering the Project in accordance with the Governing Documents. The Master Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any right and powers that may reasonably be implied under the Governing Documents. The Members of the Master Association shall be the Owners of Lots within the Project, including the Declarant. The duties and powers of the Master Association shall relate the Project as a whole and the ownership, use, and maintenance of the Common Areas, including the imposition of assessments for such purposes.

**3.3 Neighborhood Associations.** The Declarant may create one or more Neighborhood Associations within the Project from time to time to serve the special needs of Owners within such Neighborhoods. Neighborhood Associations may be planned unit developments or created under a condominium form of ownership. Nothing in this Declaration requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Master Association. Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining any property which it owns or which its covenants designate as being for the common benefit of its members. If a Neighborhood Association fails to meet some or all of its responsibilities, the Master Association, in its discretion, may assume such responsibilities, the costs for which shall be an expense of said Neighborhood Association. The declarant of each Neighborhood Association shall be considered that Neighborhood Association's developer. A Neighborhood Association's declaration of covenants, conditions, and restrictions shall be approved by Declarant before it may become effective. All expenses incurred by the Master Association for the exclusive use or benefit of a Neighborhood Association and its members shall be charged to the applicable Neighborhood Association and shall not be part of the Common Expenses for which all Lots are subject.

**3.4 Benefit Assessment Areas.** The Declarant or the Master Association may create and place Lots into one or more Benefit Assessment Areas in which the Lots share Limited Common Areas or receive special benefits or services from the Master Association that it does not provide to all Lots within the Project. The creation of a Benefit Assessment Area, the designation of Lots subject to a Benefit Assessment Area, and the scope of services to be performed for a Benefit Assessment Area shall be set forth in a Board resolution, or similar Association document. A Lot may be assigned to more than one Benefit Assessment Area, depending on the number and types of special benefits or services it receives. A Benefit Assessment Area may be comprised of Lots of more than one housing type and may include Lots that are not contiguous. The Declarant may designate Benefit Assessment Areas and assign Lots to a particular Benefit Assessment Area at any time prior to the expiration of the Control Period. Declarant may also unilaterally amend Benefit Assessment Area boundaries. Following the Control Period, the Master Association Board may, by a resolution, designate Benefit Assessment Areas and assign Lots to them upon the affirmative vote of Owners exceeding sixty-seven percent (67%) of the Lots affected by the proposed designation.

After the expiration of the Control Period, the Owners of Lots within each Benefit Assessment Area

may (but shall not be required to) elect a "Benefit Assessment Area Committee" of no more than five (5) members to represent and act on behalf of the Owners with respect to the services and benefits that the Master Association provides to the Benefit Assessment Area. Benefit Assessment Area Committees are subordinate to the Board and shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. However, any assessment or action taken by the Master Association Board directed at or primarily affecting a Benefit Assessment Area shall be made in consultation with such Benefit Assessment Area Committee.

**3.5 Commercial Parcels.** Commercial Lots and commercial buildings may be located within the Project. The provisions of this Declaration shall apply to each Commercial Lot unless specifically exempted by the Declarant. The Declarant shall have the authority to determine the Allocated Interest for each Commercial Lot, in its sole discretion. The Declarant may, but shall not be required to, record covenants, conditions and restrictions that specifically regulate Commercial Lots. The Board is authorized to adopt separate Rules for the regulation of Commercial Lots and residential Lots. Unless otherwise set forth in a Supplemental Declaration, each Commercial Lot shall have an Allocated Interest equal to each residential Lot and shall have one vote per Lot.

**3.6 Impact Fee Areas.** The Board shall have the right, but not the obligation, within its sole discretion, to impose a schedule of Impact Fees for the costs of infrastructure, facilities, or improvements provided to a Lot. The Master Association may set Impact Fees by Board Resolution, Rule, or other similar Master Association document. To the extent reasonably practical, Impact Fees shall be uniform for similarly situated Lots and the benefits they receive; however, there shall be no requirement for uniform Impact Fees across the Project. The authority to assess Impact Fees shall be construed broadly to permit the Master Association to recover and pay for any and all costs incurred in the development and construction of improvements in the Project. Impact Fees may be assessed at any time the Master Association determines, including, but not limited to: a transfer of title, an application for a building permit, or an application for connection to a utility facility. Impact Fees are intended to offset the effect that the development and occupancy of each Lot will have on the infrastructure and environment within the Project. If the Association collects monies in excess of the amounts required to cover the costs of the infrastructure or facilities that are the purpose of the Impact Fees, then the Association may reimburse Owners the excess funds, or may hold such funds for the future benefit of the Lots served by the Impact Fee in the same proportional allocation in which the Impact Fees were assessed. Impact Fees shall be subject to all lien rights of the Master Association and shall be treated as Individual Assessments for collection purposes.

**3.7 Live-Work Units.** Live-Work Units may be used for any use permitted by city zoning, so long as such use complies with the limitations set forth herein, and all other provisions of the Declaration. Live-Work Unit Owners must receive approval for the intended use from the Master Association prior to commencing any commercial activities. The Master Association may set forth application and approval procedures in the Rules. The Master Association shall have the sole discretion to deny any application or use that it deems is inconsistent with the community nature of the Project, is unreasonably disruptive to neighboring Owners, or overburdens Common Areas. In addition, the operation of Live-Work Units shall be governed as follows: (a) utilities and expenses arising from use as a Live-Work Unit shall be maintained at the expense of the Live-Work Unit Owner; (b) signs advertising the uses being undertaken at the Live-Work Units may only be placed in locations designated by the Master Association or designated on a Plat; (c) the Master Association may place limits on the number of customers permitted to occupy a Live-Work Unit and/or the Association's Common Areas so that such use does not violate occupancy limitations and does not unreasonably burden Association parking and Common Areas; (d) Live-Work Units may not create a nuisance, light pollution, noise pollution, electric and utility overloading, violation of Association

insurance standards, unreasonable storage of trash, refuse and materials, or activities which are inconsistent with the residential nature of the Project; (e) Live-Work Unit Owners shall provide, at their sole cost and expense, property and liability insurance for any and all commercial activities conducted within Owner's Live-Work Unit in policy limit amounts approved and directed by the Master Association, but no less than \$1,000,000 per occurrence; (f) Live-Work Unit Owners shall be obligated to require all entities or subcontractors operating within the Live-Work Unit to carry full insurance, including statutory worker's compensation, employer liability, and comprehensive general liability, for personal injury, bodily harm and property damage; (g) Live-Work Unit Owners shall indemnify, defend, and hold harmless the Master Association, its directors, officers, agents, and employees against any actions, suits, proceedings, liabilities, and damages which may result from the negligent acts or omissions of Owner, its officers, agents, subcontractors, or employees in connection with any commercial activities conducted within Owner's Live-Work Unit, including without limitation defense costs, attorney, and expert witness fees regardless of any active or passive negligence or strict liability of the Association, and an Owner's indemnification obligation shall continue until any such claim is fully and finally resolved; and (h) Live-Work Unit Owners shall be subject to fines for violations of the Governing Documents.

**3.8 Allocated Interest.** Each Lot is entitled to a vote equal to its Allocated Interest for all matters related to the Master Association that Owners are permitted or required to vote or approve, and such votes shall be cast in accordance with the Bylaws. The Allocated Interest of each Lot shall not be altered without the express affirmative written consent of at least sixty-seven percent (67%) of the total Allocated Interest of the Master Association. A recorded amendment or Supplement to this Declaration describing the approved changes is required to modify Allocated Interest amounts or calculations.

Each Lot shall be assigned an Allocated Interest factor as follows for all purposes of voting and assessments:

- (a) Each Lot approved to be constructed with a single-family dwelling shall assigned an Allocated Interest factor of 1. This includes Lots with detached homes, attached townhomes, and condominium units.

The Allocated Interest percentage of each Lot shall be determined by dividing each Lot's Allocated Interest factor by the total outstanding Allocated Interest factors in the Project.

Notwithstanding the foregoing, during the Control Period, the Declarant shall have the power to unilaterally adjust the Allocated Interest of each Lot as Additional Land and Lots are added or withdrawn from the Project through an amendment or Supplement to this Declaration.

**3.9 Declarant Voting Rights.** The Declarant shall be entitled to a vote equal to fifty (50) times the Allocated Interest assigned to each Lot the Declarant owns in the Project for all matters in which Members are entitled to vote. Declarant's voting rights shall extend beyond any termination of the Control Period, so long as the Declarant owns one or more Lots in the Project. The foregoing voting rights are to be in addition to all Special Declarant Rights contained in the Governing Documents during the Control Period including, but not limited to, Declarant's unilateral right to control the Board, expand the Project, act as the DRC, transfer Common Areas, and amend the Governing Documents.

**3.10 Election Districts.** The Declarant or the Master Association may (but is not required to) designate "Election Districts," consisting of one or more Neighborhood Associations or Lot types, for the purpose of electing Board Members of the Master Association. The Master Association's Bylaws shall set forth the method of establishing Election Districts. The number of Election Districts

shall not exceed the total number of Board of Directors. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups of Lots are able to elect the entire Board. Notwithstanding anything to the contrary, the Declarant shall have the sole discretion to establish, modify, or terminate Election Districts during the Control Period.

3.11 **SITLA.** By executing this Declaration, SITLA joins in and consents to this Declaration pursuant to Section 5.2(F) of the Development Lease. Upon termination of the Development Lease, SITLA shall have the right, but not the obligation, to succeed to the rights and obligations of Declarant by executing and recording an Assumption of Declarant's Rights and Obligations with the Washington County Recorder's office, whereupon SITLA shall be entitled to exercise all rights of Declarant under this Declaration, including, without limitation, the right to deannex real property that it owns, and shall be subject to all of the obligations of the Declarant under this Declaration.

From time to time, as reasonably requested by Declarant, SITLA will join in such documents and instruments, including Supplemental Declarations, as are necessary or appropriate to effectuate or further the intents and purposes of this Declaration; provided however, SITLA will not be required to incur any out of pocket costs or expenses.

To the extent that SITLA or any of its employees, agents, or representatives are entitled to sovereign or governmental immunity, nothing in this Declaration or Governing Documents shall be deemed a waiver of such immunity.

#### **ARTICLE IV - ORGANIZATION & GOVERNANCE OF ASSOCIATION**

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

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

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

- (a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- (d) The powers, duties, and obligations not reserved specifically to Owners; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for

the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

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

**4.4 Membership.** Membership in the Master Association shall at all times consist exclusively of Owners. Each Owner shall be a Member of the Master Association so long as such Owner has an ownership interest in a Lot within the Project and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.

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

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

**4.7 Board of Directors.** The governing body of the Master Association shall be the Board of Directors. The Board of Directors shall make all decisions and take all actions on behalf of the Master Association unless a decision or action is specifically required by the Governing Documents to be subject to Owner vote. During the Control Period, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint all Board members. After the Control Period ends, the Board of Directors shall be elected by the Members of the Association pursuant to the election provisions of the Bylaws. The Bylaws may also set forth qualification requirements for serving on the Board. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board of Directors shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Association. The Board may retain professionals, including, without limitation, attorneys, accountants, managers, and bookkeepers to assist in any Board function.

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

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

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

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

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

#### **ARTICLE V – MASTER ASSOCIATION RIGHTS & RESPONSIBILITIES**

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

**5.2 Maintenance.** The Board shall make provisions for completing all maintenance, repair, and replacement requirements of the Master Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Master Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the Project, in accordance with the general purposes specified in this Declaration. The Master Association may set maintenance standards for all areas within the Project and may assess any Neighborhood Association for the costs of maintenance or repair that the Master Association, in its reasonable discretion, determines is necessary to bring such areas in compliance with the Project's standards.

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

**5.4 Setting and Collecting Assessments.** The Master Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of

the Governing Documents.

**5.5 Title to Common Areas.** The Declarant may grant title to the Common Area to the Association, to the City where the Project is situated, or to any other entity as determined in the sole discretion of Declarant; however, neither this conveyance nor any other provision of the Declaration shall be construed to create a contractual relationship between the Master Association and Declarant. The Master Association shall hold title to the Common Areas which are conveyed to it, and shall pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments. After the Control Period, upon approval of sixty-seven percent (67%) or more of the Allocated Interests of the Master Association, the Board shall have the authority to transfer title to Common Area real property owned by the Master Association to governmental entities for public use, or to individual third parties for private use. Declarant shall have all rights and voting authority to unilaterally approve the transfer of title to Common Area on behalf of the Master Association during the Control Period.

**5.6 Entering Lots.** The Master Association shall have the right at all times and upon reasonable notice of at least 48 hours (and at any time in case of an emergency) to enter into any Lot, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article VIII. Notice shall not be necessary in case of an emergency originating in or threatening such Dwelling or any other part of the Project, including the sound or sight of running water, the smell or sight of smoke, abnormal or excessive noises, and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot under this Section and shall defend, indemnify, and hold harmless the Master Association for all damages related to such entry, except for such damages resulting from willful or intentional misconduct.

**5.7 Authority Over Neighborhood Associations.** Neighborhood Associations are subordinate to the Master Association. Accordingly, the Master Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Master Association, its Members, or inconsistent with the Project's standards. The Master Association shall also have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated. If a Neighborhood Association fails to comply with the Master Association's requirements after reasonable notice, then the Master Association shall have the right to effect any remedial action and shall levy a Special Assessment on the Neighborhood Association to cover the enforcement costs incurred by the Master Association, including reasonable attorney fees.

**5.8 Hiring Managers and Delegating Responsibilities.** The Master Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. The Board has no authority to enter any management agreement or contract inconsistent with



the terms of the Governing Documents.

**5.9 Rules.** The Master Association shall have the authority to promulgate and enforce Rules for the regulation and operation of the Project. This provision is intended to be interpreted broadly and permit the Master Association to adopt rules governing all activities and uses within the Project which the Master Association may legally enforce. If Rules are adopted, they shall be consistently and uniformly enforced. Rules may be different for the various product types including townhomes, condominium units, Live-Work Units, and Commercial Lots. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject only to a judicial determination, if any is timely sought. Pursuant to Utah Code § 57-8a-218(19), the requirements of Utah Code §§ 57-8a-218(1) through (14), except subsections (1)(b)(ii), (3), (4), (5), and (7), are hereby modified to not apply to the Master Association. During the Control Period, the Declarant and the Declarant appointed Board (if any) shall be exempt from the rulemaking procedures of Utah Code § 57-8a-217.

**5.10 Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Master Association may: (1) impose fines; (2) suspend Owners' rights to utilize the amenities within the Project; (3) collect rents directly from tenants if Owners fail to pay Assessments; (4) bring suit for legal or equitable relief for any lack of compliance with any provisions of this Declaration or Rules promulgated by the Board or DRC; (5) exercise self-help or take action to abate a violation in any situation which requires prompt action, or within a reasonable time in a non-emergency situation after notice has been given to the offending Owner; and (6) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

**5.11 Discretion in Enforcement.** Subject to the discretion afforded in this Section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.

(a) The Board shall use its reasonable judgment to determine whether to exercise the Master Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Master Association, and (2) whether to pursue a claim for an unpaid Assessment.

(b) The Master Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Master Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Master Association's resources; or (4) it is not in the Master Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(c) If the Board decides to forego enforcement, the Master Association is not prevented from later taking enforcement action. The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

5.12 **Noncompliance Notice.** Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. By acquiring title to a Lot in the Project, all Owners agree and consent that upon any act of noncompliance, the Board, at its discretion, may record a "Notice of Noncompliance" on an offending Lot or property in the records of the Washington County Recorder. Upon receipt of a Notice of Noncompliance, Owners shall, at their own cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to act as required hereunder, the Board or their designee, without liability for trespass or nuisance, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the change. All costs incurred by the Master Association pursuant to enforcement of this Section shall be an Individual Assessment.

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

5.14 **Bulk Services Agreements.** The Master Association shall have the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or for groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

5.15 **Joint Use Agreements.** The Association shall have the right to enter into joint use agreements with neighboring property owners and/or homeowners associations, including Neighborhood Associations. The terms of any joint use agreement shall be approved by the Board. Any funds received under a joint use agreement shall be used to reduce the total Common Expenses of the Association, or deposited into a reserve account, as applicable. Each Owner hereby consents and agrees that the Master Association may record any Joint Use Agreements or easement agreements it enters into against all Lots in the Project.

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

5.17 **Records.** Owners shall have the right to inspect Master Association Records within a reasonable time following an Owner's request. "Master Association Records" are limited to the

following documents and information: (a) Declaration, (b) Bylaws, (c) Articles of Incorporation, (d) minutes of Owner meetings and Board meetings, (e) most recent approved budget, (f) a record of all actions taken by Owners or the Board without a meeting, (g) a record of all actions taken by a committee of the Board in place of the Board, (h) a record of all waivers of notices for Owner meetings and Board meetings, (i) a list of all Owners in alphabetical order showing their address and the number of votes each Owner is entitled, (j) all resolutions adopted by the Board currently in effect, (k) all written communications to Owners generally as Members for a period of three years, (l) a list of Board member names and addresses, (m) a copy of the most recent annual report delivered to the State, (n) all annual financial statements (balance sheet and profit and loss statement) of the Association for the past three years, and (o) the most recent reserve analysis. Master Association Records shall specifically exclude emails, texts, phone calls, writings, and personal communications between Board Members or Owners. The Board shall have the power and discretion to determine what documents or information are considered Master Association Records if there is a dispute over the definitions or language provided in this Section. The Association shall have no duty to keep, maintain, produce, or permit inspection of any documents, draft documents, electronic files, or other information not explicitly identified in Utah Code §§ 57-8a-227(1)(a)(ii) and 16-6a-1601. The Board shall have the sole discretion to determine the format in which documents and records are kept. The Master Association may redact any private, privileged, or sensitive information from Master Association Records produced herein, in the Board's discretion. The Master Association may provide additional information or documents to Owners not identified as Association Records herein, in the Board's discretion. The Master Association may make Master Association Records available via a website, and if so provided, then the Master Association shall have met its record inspection obligations set forth in this Section or other applicable law for all such documents posted thereon.

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

**5.19 Loans.** The Master Association shall have the authority to obtain loans for the efficient development of the Project and operation of the Association. The Master Association may use Common Area and other assets of the Association as collateral for financing and may also provide any other security as may be necessary for the loan, including but not limited to securitizing, pledging, or assigning the Master Association's right to assess Owners. A majority vote of the Board shall be required prior to obtaining any loan. Notwithstanding anything to the contrary, no Lot shall be used as security for any loan to the Master Association without that Owners' consent. Loan expenses and payments shall be a Common Expense.

**5.20 Bonds.** The Association shall have the right and authority to issue bonds or obtain loans for the financing of amenities, infrastructure, and other improvements within the Project upon a majority vote of the Board. The Master Association may pledge real property or personal property assets of the Association as collateral, and may also pledge or assign the Master Association's right to assess Owners as security for loans or bond issuance. The Master Association may obtain loans or issue bonds in differing amounts at various times to finance amenities and improvements. Once bonds are issued, the Master Association shall be obligated to repay these bonds over a period of time the Board so selects, out of funds derived from Owner assessments. Each Owner acknowledges that assessments may increase as bonds are issued to fund Project amenities and improvements. All loan or bond costs shall be considered a Common Expense including issuance costs, expenses, interest payments, and principal payments.

**5.21 Other Necessary Rights.** The Master Association and the Board shall have any other

right that is reasonably necessary to carry out the terms of the Governing Documents.

#### **ARTICLE VI - MAINTENANCE, REPAIR AND REPLACEMENT**

**6.1 Maintenance by Owners.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all structures, landscaping, and other improvements comprising the Owner's Lot, Dwelling, and Limited Common Areas unless such maintenance responsibility is otherwise assumed by, or assigned to, the Master Association or a Neighborhood Association pursuant to this Declaration, or any Declaration governing a Neighborhood Association. Each Owner shall paint, repair, and otherwise maintain the interior of its Dwelling and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area.

**6.2 Maintenance by the Master Association.** The Master Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Areas together with all improvements thereon, including, but not limited to: (i) the playgrounds, and recreational amenities; (ii) the private roads within the Project, including snow removal; (iii) fences and related improvements installed for the benefit of all Owners in the Project; (iv) personal property owned by the Association, (v) the common landscaped areas within the Project that are not maintained by a Neighborhood Association or Lot Owners, and (vi) any property or improvements that a municipality may require the Master Association to maintain (regardless of whether such property is owned by the Master Association or a governmental entity). The Master Association retains the absolute right to remove and replace any structure, item, fixture or condition in the Common Area. The Master Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Board of Directors may determine, in its sole discretion, the scope of its maintenance obligations and an appropriate maintenance standard for the Common Areas, so long as those areas are maintained in the best interests of the Owners and the Project. If any allocation of maintenance or repair responsibility in this Declaration is ambiguous, then the Board shall have the sole discretion and authority to adopt a Board resolution that assigns such maintenance or repair responsibility to Owners, to a Neighborhood Association, or to the Master Association as the Board so determines is in the best interests of the Master Association and its Members.

(a) The Master Association shall not be responsible for the repair and maintenance of any Neighborhood Association common area or limited common area, but the Master Association may assume the maintenance responsibility for any common area or private property in a Neighborhood Association, either upon designation of the Neighborhood Association as a Benefit Assessment Area or upon the Board's determination, pursuant to its authority, that the level and quality of maintenance then being provided is not consistent with Project standards. The Master Association may also make Special Assessments to any Neighborhood Association for any maintenance or repair to Neighborhood Association common property if the Board in its reasonable discretion determines that such maintenance or repair is necessary to bring the property in compliance with the standards set forth for the Project. The Master Association need not treat all similarly situated Neighborhood Associations the same.

(b) The Master Association may adopt resolutions to identify fencing maintenance, repair, and replacement obligations and may place such obligations on itself, Neighborhood Associations, or Owners, in the Master Association's sole discretion. Fence maintenance

obligations may differ between areas of the Project, lot types, or Neighborhood Associations, or fence types.

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

**6.3 Neighborhood Association Maintenance.** Each Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, and the standards for the Project set forth by the Declarant during the Control Period, or by the Master Association's Board of Directors following the expiration of the Control Period. The Master Association may adopt resolutions to delegate maintenance authority to Neighborhood Associations for any Common Areas owned by the Master Association in which the Master Association determines are the responsibility for a Neighborhood Association to maintain, in the Master Association's sole discretion.

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

**6.5 Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Lot as required in the Governing Documents or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, then the Master Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a reasonable period of time as determined by the Board. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Master Association may take any action allowed for a default of the Governing Documents. In addition, the Master Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot, including reasonable attorney fees.

**6.6 Party Wall and Shared Roof Maintenance.** By acceptance of a deed to a Lot containing an attached Dwelling, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Walls and shared roofs be maintained in good condition and repair to preserve the integrity of the Dwellings as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall and shared roof appurtenant to their Dwelling. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Dwelling. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit one or more, but fewer than all, of the Owners, the Owner(s)

benefited thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed unless such duty is assigned to a Neighborhood Association. If the need for maintenance or repair of a Party Wall or shared roof is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Walls and shared roofs, except as may be otherwise provided in the immediately preceding sentences, or in a Neighborhood Declaration, the Owners benefitted by a Party Wall or shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If there is a dispute over the responsibility for maintenance or repair of a Party Wall or shared roof, the Master Association may, but shall not be required to, intervene and determine each Owner's responsibility. The Master Association shall have the powers set forth in Section 6.5 to remedy any neglect in performing Party Wall or shared roof maintenance responsibilities.

6.7 **Utilities.** The charges for utilities that are metered separately to each Lot or Dwelling shall be the responsibility of the respective Lot Owner. The charges for utilities that are metered collectively for the Lots within a Neighborhood Association shall be the responsibility of the respective Neighborhood Association. In the event water, electrical, sewer, or other utilities are metered collectively for the entire Project, or metered separately for Common Areas that the Master Association maintains, then the Master Association shall be responsible for paying for such utility expenses, which expenses shall be a Common Expense of the Association and shall be paid through regular assessments.

#### ARTICLE VII - ARCHITECTURAL STANDARDS

7.1 **General.** All, landscaping, structures, Dwellings, improvements, and other items placed on a Lot are subject to the standards for design, landscaping, and aesthetics adopted pursuant to this Article and the approval procedures set forth in this Article.

7.2 **Architectural Review Required.** Without the prior approval of the Master Association (or the Declarant during the Control Period), an Owner or Builder may not (1) install or build any new structure, building, fence, landscaping, or Dwelling; (2) make alterations, upgrades, repairs, or modifications to any part of the exterior of any structure, building, or Dwelling; (3) install or alter any new or existing exterior feature such as a driveway, walkway, fence, landscaping or anything else that alters the exterior appearance of the Lot; and (4) alter or modify the finished grade to a Lot, or alter the ground level, slope, pitch or drainage patterns of any Lots as fixed by the original finish grading. This provision is intended to be read as broadly as possible to require approval before any exterior work is performed on a Lot, including changes to landscaping.

Notwithstanding anything to the contrary herein, until the expiration of the Control Period, the Declarant shall have sole authority and responsibility to approve the plans for the construction of all Dwellings, apartments, commercial buildings, and landscaping of each Lot in the Project.

7.3 **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance for the improvements within the Project.

(a) The Declarant may prepare initial Design Guidelines which may contain general provisions applicable to the entire Project as well as specific provisions that vary among uses, housing types, or locations within the Project.

(b) The Declarant shall have sole and full authority to amend the Design Guidelines during the Control Period. The Declarant's right to amend the Design Guidelines shall continue even if

it delegates reviewing authority to the Master Association or another entity. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

(c) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and DRC. The Design Guidelines may also designate landscaping requirements and may require complete landscaping of Lots prior to occupancy. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

(d) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

(e) Declarant may preapprove Builder's plans and designs for Dwellings or other improvements for general or repetitive application, and a Builder's construction in compliance with such preapproved plans and designs shall be deemed to be compliant with all Design Guideline requirements of the Master Association. Such preapproved plans shall not require resubmission prior to use on subsequent Lots. The Declarant or the Board may also exempt Builders from Design Guideline requirements in the Declarant's or Board's discretion.

**7.4 Design Review Committee.** A Design Review Committee may be appointed by the Board to regulate the external design, appearance, and location of any structure and landscaping on any Lot and enforce the architectural provisions of the Declaration or Design Guidelines. Such committee shall consist of an uneven number of persons of at least three (3) members, but may include more members at the discretion of the Board. The Board need not appoint a Design Review Committee. If no such committee is appointed, the Board shall have all powers of the DRC and may act in all ways and have all powers otherwise given to the DRC. During the Control Period, the Declarant shall act as the DRC for the Project and may delegate its authority to act as the DRC to one or more individuals or entities.

(a) The DRC need not be composed of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. Board members may serve on the DRC. The DRC shall be a Sub-Committee as defined in the Bylaws, and shall act in accordance with the requirements of Sub-Committees.

(b) The DRC shall have the Board's right of entry to verify compliance with this Article. The DRC shall have no duty or obligation to make inspections; however, nothing herein shall prevent the DRC from making inspection prior to, during, or after construction. The DRC may inspect any work performed in the Project to determine its compliance with the Design Guidelines and the Governing Documents.

(c) Members of the DRC shall serve for a term of one (1) year, and may serve for consecutive terms of service as appointed by the Board. Any vacancy on the Committee may be filled by the Board to serve the remainder of the term of the originally appointed member(s). The Committee may act even though a vacancy has not been filled. Any member of the DRC may be removed at any time by the Board with or without cause.

(d) The Master Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

(e) One or more rights or powers of the Design Review Committee may be delegated to a

Neighborhood Association by the Board or Declarant during the Control Period.

**7.5 Design Review Approval Procedures.** The Declarant or the Board may adopt Rules relating to the process for the submission of plans and specifications in the Design Guidelines. Unless the Rules or Design Guidelines provide otherwise, no structure, improvement, or exterior remodel of any kind whatsoever shall be erected, placed, moved onto, or commenced without the prior written approval of the Declarant or the DRC.

(a) In reviewing each application, the DRC may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment; the building bulk or mass of any buildings or structures within the Project; building location with respect to topography, existing trees; finished grade elevations; and harmony of landscaping with the natural setting and surroundings. DRC decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

(b) The DRC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to judicial review so long as they are made in good faith and in accordance with required procedures.

(c) No approval is required for interior modifications that do not affect the exterior of Dwellings or structures, although the Board may still adopt Rules relating to the use of Common Area or roadways for staging and other construction needs.

(d) An Owner or Neighborhood Association may complete any maintenance to the exterior of a Dwelling or other approved structure on a Lot, to the extent that such maintenance obligation is the responsibility of the Owner or Neighborhood Association, if such maintenance will not change the appearance of the already-built and approved Dwelling or structure.

(e) As part of any approval, the DRC may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

(f) If the Declarant or DRC shall fail to act upon any written request submitted to it within thirty (30) days after a complete submission of documents in a form acceptable to the DRC, such request shall be deemed to have been denied.

**7.6 Appeals.** An applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than fifteen days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the DRC's notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than thirty days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

**7.7 Noncompliance.** If at any time the Declarant, DRC, or Board find that any work was not done in substantial compliance with plans approved by the DRC or was undertaken without first



obtaining approval from the DRC, written notice shall be sent by the DRC to such Owner specifying the noncompliance and requiring the Owner to cure such noncompliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the noncompliance or to enter into an agreement to cure on a basis satisfactory to the DRC within said thirty (30) day period or any extension thereof as may be granted, the Board may, at its option, cause the non-complying improvement to be removed or the noncompliance to be cured. Upon demand, the Owner shall reimburse the Master Association for all costs and expenses incurred by the DRC and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorney fees and costs. The Owner shall be personally liable for all such costs and expenses, and the Master Association also shall have a lien against the noncomplying Lot for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Individual Assessment.

**7.8 No Waiver of Future Approvals.** The approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval. Any failure of the DRC or Board to enforce the requirements of this Article or the Design Guidelines shall not preclude any future actions to enforce such requirements.

**7.9 Expenses of Design Review Committee.** The DRC may charge reasonable fees to Owners for the processing of any request, plans, or specifications including consultation with a professional. The Association shall pay any ordinary or reasonable expense of the architectural review.

**7.10 Delegation of Authority.** The Board may delegate any of the DRC's responsibilities to the design review committee or board of a Neighborhood Association when it reasonably believes the Neighborhood Association will carry out the intent of any Design Guidelines and the Declaration. Any such delegation may be revoked at any time by the Board.

**7.11 Variances.** The DRC may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstruction, hardship, or aesthetic or environmental considerations justify such a variance, however, the DRC shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRC from denying a variance in other similar circumstances. A variance requires the Declarant's written consent during the Control Period and thereafter, requires the Board's written consent. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

**7.12 No Liability.** Neither the Declarant, the DRC, the Board, the Master Association, nor any of its Members shall be liable for damages to any person submitting any plans for approval, or to any Owner within the Project, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. The DRC shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The DRC shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning, or other land use regulations, (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer, or any other person, (c) construction means, methods, techniques, sequences, or procedures, safety precautions, or subsequent loss, damage, or failures due to soil or any other natural or man-

made conditions that may exist, or (d) any failure to carry out any construction in accordance with plans or specifications.

7.13 **Declarant & Builder Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, Builders, or their duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Lots, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant, Builders, and/or other persons engaged in the construction of Dwellings within the Project. The Declarant and Builders may use vacant Lots and other areas to be used for parking in connection with the showing of model homes or for vehicles necessary for development and construction activities.

#### ARTICLE VIII - BUDGET & ASSESSMENTS

8.1 **Purpose of Assessments.** Money collected by the Master Association shall be used for the purposes of: promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.

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

(a) The budget shall track and estimate the expenses associated with each designated Benefit Assessment Area (if any) separately from the Common Expenses in order to allocate these expenses as set forth in Section 8.8. "Benefit Assessment Area Expenses" shall mean and include those actual and estimated expenses incurred or to be incurred by the Association for the benefit of the Lots within each designated Benefit Assessment Area which may include costs of snow removal, landscaping, construction, insurance, maintenance, and any repair and replacement of the Common Area facilities appurtenant to the Benefit Assessment Area, structures and adjacent areas. If the Benefit Assessment Area responsibilities require the maintenance or repair of long-term Common Area facilities, then the Benefit Assessment Area Expenses shall include contributions to a reserve fund for the repair and replacement of such facilities. Benefit Assessment Area reserves shall be accounted for and kept separate from the Association's primary reserve fund. Separate accounting and financial reporting shall be maintained for each Benefit Assessment Area.

8.3 **Payment of Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Master Association the Owner's Regular Assessment and Benefit Assessment Area Assessment in monthly installments.

(a) Neighborhood Association Payment Requirements. For all Lots located within a

Neighborhood Association, each Neighborhood Association shall have the obligation to collectively pay to the Master Association in monthly installments all Regular Assessments and Benefit Assessment Area Assessments attributable to each Lot within such Neighborhood Association regardless of whether the Neighborhood Association has received the same from all of its members. The Neighborhood Associations and not the Master Association shall be responsible for collecting from the Owners any balances owing for Regular Assessments and Benefit Assessment Area Assessments and shall be entitled to enforce the same against its members. Nothing in this subsection shall affect the Master Association's lien or collection rights against each delinquent Owner.

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

**8.5 Personal Obligation for Assessment.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Master Association to pay to the Master Association (or Neighborhood Association as required in Section 8.3(a)) any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs, and attorney fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due. However, nothing herein shall alleviate any Neighborhood Association from its obligation to pay the Association the Assessments attributable to each Lot within such Neighborhood Association nor shall anything herein preclude the Association from enforcing such obligation against any Neighborhood Association. During the period of time a Lot is designated as an Exempt Lot, the Owner's assessment obligations shall be released, but only to the extent or scope so determined by the Declarant or by agreements entered into with the Declarant.

**8.6 Capital Improvements.** Expenses for capital improvements may be included in the regular budget, paid for through Special Assessments, paid for through bond issuance proceeds, paid for via direct bank loans, or paid for in any other manner as determined by the Board of Directors.

**8.7 Regular Assessment.** The Regular Assessment shall be paid by all Lots within the Project that are subject to assessment. The Regular Assessment shall be computed by subtracting the Benefit Assessment Area Expenses from the total Common Expenses of the Association and then allocating this figure to all Lots subject to assessment (excluding Exempted Lots) based on the Allocated Interest of each Lot. Regular Assessments shall be fixed at a uniform rate based on each Lot's Allocated Interest. Unless otherwise exempted through agreements with Declarant, all Lots shall be assessed the full assessment rate beginning the later of the first day after transfer from Declarant, or beginning the first day following the recording of a plat creating a subdivided and parceled Lot.

(a) Neighborhood Associations shall be obligated to collect and pay to the Master Association the aggregate of all Regular Assessments attributable to all Lots within its boundaries that are subject to Regular Assessments.

**8.8 Benefit Assessment Area Assessment.** The Benefit Assessment Area Assessment

shall be paid by all Lots within a designated Benefit Assessment Area that are subject to assessment (excluding Exempt Lots) in addition to the Regular Assessment. There is no requirement that Benefit Assessment Area Assessments be uniform between Benefit Assessment Areas. The amount of the Benefit Assessment Area Assessment shall be determined by allocating the budgeted Benefit Assessment Area Expenses to all Lots within the Benefit Assessment Area that are subject to assessment based on the Allocated Interest of each Lot. At no time shall a Benefit Assessment Area Assessment be charged or assessed to Lots outside of the designated Benefit Assessment Area. The amounts the Master Association collects as Benefit Assessment Area Assessments shall be held in trust for and expended solely for the benefit of the Benefit Assessment Area from which they were collected.

(a) Neighborhood Associations shall pay to the Master Association the aggregate of all Benefit Assessment Area Assessments attributable to all Lots within its boundaries that are subject to Benefit Assessment Area Assessments.

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

(a) Neighborhood Associations shall pay to the Master Association the aggregate of all Special Assessments attributable to all Lots within its boundaries that are subject to Special Assessments.

**8.10 Amenity Assessments.** The Board may levy Amenity Assessments payable monthly to cover the cost of construction maintenance and repair of amenities within the Project. Such costs may include repayment of principal, interest, and expenses for loans or bonds incurred by the Master Association to fund the construction of Common Area amenities. The amount of the Amenity Assessment shall be determined by allocating the budgeted amenity expenses to all Lots that are subject to Amenity Assessment based on the Allocated Interest of each Lot. The amounts the Master Association collects as Amenity Assessments shall be expended solely for direct Common Area amenity costs.

(a) Neighborhood Associations shall pay to the Master Association the aggregate of all Amenity Assessments attributable to all Lots within its boundaries that are subject to Amenity Assessments.

**8.11 Individual Assessments.** Individual Assessments may be levied by the Master Association against a particular Lot and its Owner for: (a) costs of providing services to the Lot upon request of the Owner; (b) costs incurred in bringing an Owner or the Owner's Lot or Dwelling into compliance with the provisions of the Governing Documents; (c) fines, late fees, collection charges, interest, and all other costs incurred in enforcing the Governing Documents against an Owner or his Occupants; (d) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or its Occupants; (e) nonpayment of a Reinvestment Fee; (f) any other charge designated as pertaining to an individual Lot in the Governing Documents;

and (g) attorney fees, costs, and other expenses relating to any of the above, regardless of whether a lawsuit is filed. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupants' negligence.

**8.12 Declarant & Builder Assessment Exemptions.** No Lot(s) owned by the Declarant, or a Declarant affiliated entity, or Lot(s) Declarant holds rights pursuant to the Development Lease, shall pay Assessments until such time as the Declarant elects to pay Assessments, and only for so long as the Declarant elects to pay Assessments. The Declarant shall have the sole discretion to determine whether a Lot is owned by one of its affiliates and whether such Lot is subject to assessment.

Upon written approval from Declarant, Lots owned by a Builder may be designated as Exempt Lots and may be exempt from Assessments until the earlier of: (a) the sale or transfer to a third-party purchaser that does not qualify as a Builder, or (b) the actual occupancy of the Dwelling after receipt of a certificate of occupancy. Notwithstanding the foregoing, Lots and Dwellings used exclusively as model homes or sales offices approved by Declarant may also be exempt from assessments. Builder assessment exemption rights granted herein shall not apply to Individual Assessments. Nothing herein shall require Declarant to grant assessment exemptions to any Builder.

**8.13 SITLA Assessment Exemption.** Anything in this Declaration to the contrary notwithstanding, SITLA shall not be liable for and shall not be required to pay Assessments upon Lots or parcels owned by SITLA (regardless of whether SITLA is the "Owner" thereof, and regardless of whether SITLA is the Declarant) and Lots and parcels owned by SITLA shall not be subject to any Assessment Lien.

**8.14 Reinvestment Fee Covenant.** A perpetual Reinvestment Fee Covenant is hereby established that obligates all Transferees of Lots to pay the Master Association, and/or applicable Neighborhood Association, a fee that benefits the Lot and Project. The Board shall have the right to establish the Reinvestment Fee assessment amount in accordance with this Section and Utah Code § 57-1-46. The following terms shall govern Reinvestment Fees:

- (a) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the County Recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the Person receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee.
- (b) The amount of the Reinvestment Fee shall be established by the Board in the Rules or through a Board resolution.
- (c) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted under Utah Code § 57-1-46(8).
- (d) The Project is considered a "Large Master Planned Development" under Utah Code § 57-1-46, and therefore is not limited in the amount that may be charged as a Reinvestment Fee.
- (e) All transfers of Lots from Declarant to a Declarant related Person shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related Person and if a Reinvestment Fee applies.
- (f) Declarant shall have the sole option to exempt the initial sale or Transfer of a Lot from Declarant, or an affiliate or successor of Declarant, to a third party from a Reinvestment Fee.
- (g) Declarant shall have the sole option to exempt Transfers of Lots from Declarant, or an

affiliate or successor of Declarant, to a Builder from a Reinvestment Fee. Any such Builder exemption shall be in writing and signed by Declarant in order to be enforceable.

(h) Neighborhood Associations shall have the right and discretion to establish a Reinvestment Fee assessment for their own benefit under the authority provided by this Reinvestment Fee Covenant. Neighborhood Associations shall have the right to record a separate and independent Notice of Reinvestment Fee Covenant that names the Neighborhood Association as the beneficiary of the Reinvestment Fee. Neighborhood Associations are an intended third party beneficiary of the rights set forth in this Reinvestment Fee Covenant and shall have all powers of collection and enforcement provided in this Declaration to enforce the payment of Reinvestment Fee assessments.

(i) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

(j) All Lots and parcels owned by SITLA shall be exempt from Reinvestment Fees.

**8.15 Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Master Association to send a statement to an Owner or Neighborhood Association, or an error in any such statement (other than a Statement described in Section 8.15 below) shall not relieve any Owner or Neighborhood Association of liability for any Assessment or charge under the Governing Documents.

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

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

**8.18 Acceptance of Materials or Services.** In the event the Master Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Board of Directors.

**8.19 Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments,

refund the excess to the Owners in proportion to the Allocated Interests of each Lot, or take other action with the funds permitted under this Declaration, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Master Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

**8.20 No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Master Association, and no offsets against such amounts by Owners shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Master Association owes the Owner money, or that the Master Association is not complying with its obligations as provided for in the Governing Documents.

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

#### **ARTICLE IX - NONPAYMENT OF ASSESSMENTS & LIABILITY**

**9.1 Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article.

**9.2 Collection Charges and Interest.** If the Master Association does not otherwise adopt or establish billing and collection procedures in the Rules or through Board resolution, the following shall apply: Assessments shall be due and payable on the first (1<sup>st</sup>) day of each month and shall be considered late if not received by the tenth (10<sup>th</sup>) day of the month. Accounts with an unpaid balance after the tenth (10<sup>th</sup>) day of each month shall be charged a late fee of thirty-five dollars (\$35.00). In addition to late fees, interest may accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at eighteen percent (18%) per annum. The Master Association may also assess to the Owner or Neighborhood Association (as applicable) a collection charge, late fee, and any other reasonable fee charged by a Manager related to collections.

**9.3 Personal Liability and Joint & Several Liability of Owners.** Owners are personally liable for all Assessments accruing during their time of ownership of a Lot. Owners are also jointly and severally liable for all Assessments accruing related to that Lot prior to their time of ownership of the Lot, including interest, late fees, costs, and attorney fees. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Lot. Notwithstanding such personal liability of the Owners, the Association shall be entitled to collect all Assessments from each Neighborhood Association who shall be obligated to pay Assessments to the Association regardless of whether the Neighborhood Association has received the same from its members.

**9.4 Lien.** The Master Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, attorney fees, court costs, and other costs of collection (which shall include all collection costs and shall not be limited by those costs that may be awarded by a court under the Utah Rules of Civil Procedure). This lien shall arise

and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Master Association provides otherwise in the notice of Assessment. The Master Association also has a lien on each Lot for all fines imposed against an Owner by the Master Association. This lien for fines shall arise when (1) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (2) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Master Association's lien shall have priority over every other lien and encumbrance on a Lot except: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Master Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Lot. The Master Association may, but need not, record a notice of lien on a Lot.

**9.5 Action at Law.** The Master Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien, or through an action against a delinquent Neighborhood Association. In addition, the Master Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot or against a Neighborhood Association (as applicable), and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Master Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

**9.6 Foreclosure.** The Master Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lots in trust, with power of sale, to the Master Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Master Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

**9.7 Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

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

**9.9 Requiring Tenant to Pay Rent to Master Association.** Pursuant to and as provided for in the Act, the Master Association shall have a right to demand and collect rent from any Occupant in a Dwelling for any delinquent Assessment balance more than sixty (60) days late. Each Occupant, by moving into the Project, agrees to be personally liable and responsible to the Master Association for all rent payments after the Master Association gives proper notice that rent payments shall be paid to the Master Association.



**9.10 Attorney Fees.** In addition to any attorney fees and costs provided for herein, the Master Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure or Neighborhood Association's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessarily related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien or related documents. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default or Neighborhood Association's default in the payment of Assessments and the ultimate collection of those Assessments.

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

## **ARTICLE X - PROPERTY RIGHTS IN LOTS & COMMON AREA**

### **10.1 General Easements.**

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

(b) The Master Association (and Declarant during the Control Period) shall have nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and to maintain, repair, replace, or effectuate the restoration of the Common Area and facilities that the Master Association is responsible for maintaining which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. The Master Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and facilities for purposes necessary for the proper operation of the Project.

**10.2 Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas

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

**10.3 Easements for Future Development.** The Declarant hereby reserves for itself, Builders, and their duly authorized agents, successors, and assigns the non-exclusive right and power to grant any homeowners or condominium association it may designate and their respective members an easement over the Common Areas for the purpose of enjoyment, use, and access. Any Neighborhood Association granted such rights shall be obligated to share in the costs of the maintenance of such areas as reasonably determined by the Declarant.

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

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

(b) The right to establish and construct facilities and improvements on, over, across, under, and through the Common Areas of the Project including, but not limited to, access roads, streets, sidewalks, pathways, trails, clubhouse, pool, playgrounds, mailbox structures, sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage.

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

(d) The right to revegetate and maintain the landscaping in all areas of the Project to the extent necessary, in Declarant's judgment, to beautify the Project, to preserve and protect its appearance, to control erosion, or to restore the property within the Project to its natural condition.

Declarant shall also maintain an easement to construct, operate, maintain, repair and replace storm detention and water quality structures in the Project to adequately control surface water.

(e) The right to construct and maintain offices, prefabricated structures, or other structures for administrative, sales and promotional purposes relating to the Project during the Control Period.

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

**10.5 Right to Designate Sites for Governmental & Public Interests.** The Declarant may, but is not obligated to, designate sites within the Project for government, education, or religious activities and may convey title to property for those sites in its own discretion. The Declarant may withdraw such property from the Terms and Conditions of the Declaration, but shall ensure that reasonable conditions are placed on the development of such property to protect the interests of the Members. If Declarant's selected sites include previously designated Common Area, or the sites are owned by the Master Association, then the Board of Directors of the Master Association shall take whatever action is required to permit the Declarant's determined use, including dedication or conveyance of title to the property.

**10.6 Easements for Encroachments.** If any portion of the Common Area or any common improvement encroaches upon any Lot, or if any structure or fixture encroaches unintentionally upon any other Lot or the Common Area as a result of the manner in which improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Master Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

**10.7 Trail Easements.** Certain Lots may be subject to an easement permitting public access trails, paths, or walkways within the boundaries, or adjacent to such Lots. Any such Trail Easement shall be shown and described on a Plat and no Trail Easement shall be newly created on a Lot without the written consent of the Owner of the Lot. The Declarant hereby grants the Master Association a perpetual, non-exclusive easement on, over, under, through, and across any such Trail Easement for maintenance and repair purposes. The use of any Trail Easement shall be subject to the Rules adopted by the Board. The Master Association shall have the discretion to limit certain Trail Easements to certain Owners and is not obligated to provide public access to all Trail Easements within the Project. No Person shall place or construct any improvement or fixture within a Trail Easement without the Master Association's prior written consent.

**10.8 Public Access.** Certain facilities and areas within the Project may be open for use and enjoyment of the public. Such facilities and areas may include, but are not limited to, trails, parks, lakes, roads, sidewalks, and medians. The Declarant may designate such facilities and areas as open to the public at the time the Declarant makes them part of the Project, or the Board may so designate at any time thereafter. Notwithstanding the foregoing, the Master Association shall retain all rights to adopt and enforce Rules and regulations for any Common Areas that may be open to the public.

**10.9 Limitation on Easement.** An Owner's equal, undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:

(a) The right of the Master Association to suspend the Owner's right to the use of any

recreational facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Lot remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Master Association Rule; and (iii) for successive 60-day periods, if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Master Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and

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

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

10.10 **Views.** Views from Lots and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to any Lot or the Project. The Declarant and the Master Association shall have the right to add trees and other landscaping throughout the Project without being subject to maintaining any Owner's view.

#### ARTICLE XI - USE LIMITATIONS & CONDITIONS

11.1 **Signs.** The Master Association may regulate and restrict signs in the Project to the extent permitted by law in the Rules. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed outside the main entry of a Dwelling, or as directed by the Board. All other signs may only be erected or maintained on the Project, whether in a window or otherwise, with the prior written approval of the Board of Directors. Signs may not exceed a total of five square feet in size. Rules for signs may differ between housing types as the Board deems appropriate. Neighborhood Associations may adopt more restrictive sign regulations and in the event of a conflict, the more restrictive provisions shall prevail. The Rules for signs may be different for the various types of and residential Lots, or for Commercial Lots. These sign restrictions shall not apply to entry, directional, marketing, or other signs installed by Declarant or a Builder.

11.2 **Flags.** The Master Association may regulate and restrict flags in the Project to the extent permitted by law in the Rules. In adopting Rules pertaining to flags, the Master Association shall comply with all Federal and State laws. Neighborhood Associations may adopt more restrictive flag regulations and in the event of a conflict, the more restrictive provisions shall prevail. The Rules for flags may be different for the various types of and residential Lots, or for Commercial Lots.

11.3 **Nuisance.** No noxious or offensive activity shall be carried on within the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal

body. The Board may adopt rules that further describe the activities that are deemed to be nuisances within the Project and the Board shall have the authority and discretion to determine whether a particular activity is a nuisance. Any violation of the Governing Documents shall be deemed a nuisance.

**11.4 Temporary Structures.** No structure or building of a temporary character, including a tent, trailer, or shack, shall be placed upon the Project or used therein unless it is approved by the Board of Directors. The Declarant shall be exempted from this provision during the Control Period. Trailers, temporary construction offices, sheds, and other similar temporary structures may be permitted for construction purposes during the actual construction of structures or improvements if approved by the Declarant or the DRC.

**11.5 Parking.** Vehicles shall not be parked on the sides of the private roads, at an entrance to or in front of a garage or walkway, or at any other location within the Project which would impair vehicular or pedestrian access, or snow removal. Common Area parking stalls shall be subject to and governed by Association Rules, and may be assigned by the Board. The Association may charge a fee for the use of any Common Area parking stalls. The Master Association is hereby empowered to establish Rules governing the parking within the Project including the designation of "no parking" areas. The Master Association is not obligated to treat all areas equally and may adopt different parking rules for different areas within the Project. Rules relating to the parking of vehicles may include, but are not limited to: (1) Rules allowing or causing to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (3) restrictions on the time period and duration of temporary parking, (4) restrictions on performing vehicle maintenance or repair outside of enclosed garages, (5) restrictions on recreational vehicle parking, (6) restrictions on garage storage that obstructs the full parking capacity of the garage, and (7) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners whose guests violate such Rules. The Association shall have the right to perform ongoing inspections of Owner's Lots, driveways, and garages to ensure compliance with this Section or any Rules adopted pursuant to this Section. Unless specifically regulated by the Master Association, all parking within a Neighborhood Association's boundaries shall be governed and regulated by the Neighborhood Association. Neighborhood Associations shall also have the authority to regulate its members activities of parking on public streets or private roadways owned by the Master Association, so long as such regulations do not conflict with those of the Master Association.

**11.6 Unsightly Items.** All areas outside of Dwellings shall be kept in a clean and orderly fashion. All refuse, garbage and trash shall be kept at all times in a covered, noiseless container when left outside of a Dwelling, and any such container shall be kept within an enclosed structure or appropriately screened from view of the street. No observable outdoor storage of any kind shall be permitted on patios, decks, front yards, porches, etc. Outdoor furniture and other exterior items shall conform with standards set by the Board or the DRC, which may include the regulation of colors, materials, and product types. The Board may adopt Rules that vary or expand the provisions in this Section.

**11.7 Animals.** Domestic pets may be kept on Lots or in Dwellings in conformance with local government requirements. The Board may adopt additional Rules for the regulation of animals and pets within the Project, including but not limited to, the use of Common Areas by animals, the liability of individual Owners for damage caused by their animals, registration requirements, the use of leashes, and fines for the violations of such rules. Neighborhood Associations may also adopt restrictions relating to animals and pets. When Master Association and Neighborhood Association restrictions or requirements overlap, each Lot shall be subject to the most restrictive provisions

contained therein. No animal may be kept that causes a nuisance or threatens the health or safety of other Owners. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or the Limited Common Area of another Member and shall be leashed or restrained whenever outside a Dwelling. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet.

**11.8 Residential Occupancy.** With the exception of the Commercial Lots or other Lots zoned or designated for commercial use, no trade or business may be conducted in or from any residential Dwelling unless:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling or Lot;
- (b) The business activity conforms to all zoning and legal requirements for the Project and the business activity;
- (c) The business activity does not involve persons coming onto the Project who do not reside in the Project;
- (d) The business activity does not involve the solicitation of Occupants or Owners of the Project;
- (e) The business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners and Occupants of the Project;
- (f) The business activity will not result in the increase of the cost of any of the Association's insurance;
- (g) The Owner of the Lot resides in the Dwelling in which the business activity is proposed for the entire time any business activity is conducted; and
- (h) The Board's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

**11.9 Commercial Lot Restrictions.** Lots or parcels that may be used for commercial purposes shall be identified on the Plat, or designated by the Declarant as intended for commercial use. Such Lots shall be restricted to use commercial types approved by the City, County, and applicable zoning restrictions. Any commercial use type must first be approved by the Declarant during the Control Period. The Declarant shall have the authority to designate approved or prohibited commercial use types in an amendment or supplement to this Declaration.

**11.10 Residential Leases.** The leasing of Lots or Dwellings is permitted unless prohibited within a Neighborhood Association declaration. Unless exempted through a Board resolution or Rule, approved by Declarant, or expressly permitted within a Neighborhood Association declaration, all leases of Dwellings shall be for an initial term of at least six (6) months and no Owner shall be permitted to lease their single-family Lot or Dwelling for nightly, transient, hotel, or seasonal purposes, including Airbnb. Owners are further restricted from leasing or subleasing garages, basements, sheds or other areas within their Lots for third-party storage. The Board may adopt Rules to regulate the leasing of single-family Dwellings which may include, but are not limited to: requiring minimum lease terms, requiring a copy of each lease to be provided to the Board, reporting of name

and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default. In the event that the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. All costs incurred by the Association to enforce the terms of the Governing Documents against a tenant shall be assessed to the Owner as an Individual Assessment. The leasing restrictions set forth in this Section shall not apply to the Declarant, Declarant affiliated entities, or Lots owned by a Builder where Declarant approves an exception to the foregoing restrictions.

The leasing restrictions set forth in this Section shall not apply to Commercial Lots or any parcels of land designated for hotels, apartments, or other similar use, if any.

**11.11 No Subdivision or Timeshare.** Timeshares are prohibited in the Project. No Lot or Dwelling shall be split, subdivided, separated, or timeshared into two (2) or more Lots or Dwellings or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease part thereof. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot, any Dwelling, or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

**11.12 Landscape Maintenance.** The Association may adopt Rules regulating Owners' or Neighborhood Associations' obligation for the landscape maintenance of their Lots and/or neighborhood common area including standards for repairs, weed control, etc. The Master Association may charge fines to each Lot for a failure to maintain landscaping in accordance with Master Association standards. No material change may be made in the slope, pitch or drainage patterns of any Lot, or alter grading in a manner that increases water drainage onto adjacent Lots without obtaining the prior written approval of the DRC. Grading shall be maintained at all time so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess water.

**11.13 Lighting.** The Board may adopt Rules setting forth exterior lighting standards and regulation throughout the Project. If such rules are adopted, then exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board or the DRC.

**11.14 Solar Energy Equipment.** Solar energy systems are prohibited from being constructed or installed on attached Dwellings or condominiums. Notwithstanding the forgoing, if the Board elects to allow solar energy systems on attached Dwellings or condominiums, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Dwelling, building, or adjacent buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the DRC as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system as may be determined in a Board resolution or similar approval document. If an approved solar energy system (installation, operation,

maintenance, or otherwise) causes costs to the Master Association, then the Board may allocate these costs to the Owner(s) who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The DRC or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

**11.15 Hazardous Substances.** Owners shall comply with applicable environmental laws, and shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances, on or within the Project, that are not properly controlled, safeguarded, and disposed of. No one shall permit anything to be done or kept on a Lot or Dwelling which will result in the cancellation of insurance or which would be in violation of any public law, ordinance, or regulation. Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from, or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner.

**11.16 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce, or (iii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners and Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

**11.17 Neighborhood Restrictions.** As approved by Declarant, a Neighborhood declaration may provide additional restrictions, or restrictions more stringent than those provided in this Declaration. This includes, without limitation, pet restrictions, leasing restrictions, and parking restrictions. Neighborhood Associations shall have the authority to enforce restrictions within the Common Area of the plats that comprise the Neighborhood and its boundaries, regardless of whether such Common Area is owned by the Neighborhood Association or the Master Association.

## ARTICLE XII - INSURANCE

**NOTICE: The Master Association's Insurance Policies do not cover the personal property or personal liability of the Owners or their Occupants.**

**12.1 Insurance Requirement.** The Master Association shall obtain insurance as required in this Declaration and as required by applicable law. The Master Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand-alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Association insurance premiums shall be a Common Expense.

**12.2 Common Area Property Insurance.** To the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Master Association's obligation to maintain, the Master Association shall maintain a policy of property insurance covering the Common Area, including all buildings and improvements, building



service equipment, and fixtures thereon.

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

(b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft and (2) all perils normally covered by "special form" property coverage.

(c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(d) The Master Association shall set aside an amount equal to the amount of the Master Association's property insurance policy deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000), an amount not less than ten thousand dollars (\$10,000).

**12.3 Attached Dwelling Property Insurance.** Neighborhood Associations shall procure blanket property insurance on all attached Dwellings within their control. If there are attached Dwellings in the Project not governed by a Neighborhood Association, then the Master Association shall maintain a blanket policy of property insurance covering all such attached Dwellings as required by the applicable insurance provisions of the Act.

**12.4 Comprehensive General Liability (CGL) Insurance.** The Master Association shall obtain CGL insurance insuring the Master Association, the agents and employees of the Master Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owners' membership in the Master Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Master Association or another Owner.

**12.5 Directors' and Officers' Insurance.** The Master Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy may include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

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

**12.7 Workers' Compensation Insurance.** The Board shall purchase and maintain in effect workers' compensation insurance for all employees, if any, of the Master Association to the extent

that such insurance is required by law or as the Board deems appropriate.

12.8 **Other Insurance.** The Master Association may purchase earthquake, flood, or other types of insurance that may benefit the Project, as the Board deems appropriate.

12.9 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Master Association's property insurance policy shall be payable to the Master Association and shall not be payable to a holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, any remaining proceeds shall be paid to the Association. If proceeds remain after necessary action are taken to repair the property, then such proceeds may either be distributed to the Owners and lien holders, as their interests remain with regard to the Lots, or kept as credits to each Owner's account. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

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

12.11 **Named Insured.** The named insured under any policy of insurance shall be the Master Association. The Declarant shall be listed as an additional insured on all of the Association's insurance policies. Each Owner shall also be a named insured under the Association's insurance policies as required by law.

12.12 **Waiver of Subrogation Against Owners & Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Master Association, Declarant, the Owners, any person residing with a Lot Owner if an Owner resides in the Lot, and the Master Association's agents and employees.

12.13 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against any Person or entity at fault for the loss.

12.14 **Applicable Law.** This Declaration is specifically subjecting the Master Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to the Master Association.

12.15 **Owner Insurance.** Each Owner shall be responsible to purchase and maintain in force appropriate hazard, content, and liability insurance as such Owner shall determine to be appropriate to the Owner's needs, circumstances, and Dwelling type. The Association is not required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under an Owner's insurance policy.

### ARTICLE XIII – DESTRUCTION OF IMPROVEMENTS

13.1 **Reconstruction.** In the event of partial or total destruction of any Common Area

structure, improvement or fixture within the Project, the Board may contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Common Area in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. In doing so, the Board shall determine and liquidate the amount of insurance proceeds, if any. All costs of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

13.2 **Negotiations with Insurer.** The Master Association shall have full authority to negotiate in good faith with representatives of the insurer with regard to any totally or partially destroyed Common Area structure or improvement, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Master Association in good faith shall be binding upon all Owners and Lenders.

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

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

#### ARTICLE XIV – AMENDMENTS

14.1 **Amendments by Declarant.** During the Control Period or so long as the Declarant owns one or more Lots in the Project or any part of the Additional Land, or holds rights to Lots pursuant to the Development Lease, the Declaration and the Plat may be amended or supplemented solely by the Declarant, subject, during the term the Development Lease remains in effect, to SITLA's prior written approval, which may not be unreasonably withheld. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Lots in the Project or any part of the Additional Land. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

14.2 **Amendments by Association.** After all Additional Land has been annexed into the Project, after all of Declarant's Lots have been sold to third parties, after the Development Lease has expired with respect to the Project, and after the expiration of the Control Period, this Declaration and the Plat may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Master Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Washington County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the

foregoing, the Members' authority to amend Articles XV and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XV and XVI shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

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

**14.4 Changes to Plat or Boundaries of the Association.** During the Control Period, the Declarant may unilaterally adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot(s) or Common Area. Following the Control Period, the Master Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot(s) or Common Area upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot, that Owner of the modified Lot must consent in writing. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, (2) grants the Master Association power of attorney to sign necessary documents on each Owner's behalf as necessary for the agreement, amendment, or correction, and (3) consents that the president of the Master Association, on behalf of the Master Association and its Board, has the authority to execute any such amended Plat, supplemental Plat, or correction to the Plat on behalf of the Master Association and all Lot Owners in the Project.

**14.5 Validity of Amendments.** Any procedural challenge to this Declaration or an amendment thereto must be made within six (6) months of its recordation. Notwithstanding the foregoing, an Owner that takes title to a Lot subsequent to the recording of an amendment shall be deemed to have waived any procedural challenge to the validity of any amendments by acceptance of the deed and record notice of this Declaration and any amendment to it. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

#### ARTICLE XV – SPECIAL DECLARANT RIGHTS

- 15.1 Improvements.** Declarant hereby reserves the right, without obligation, to construct:
- (a) Any Improvements shown on the Plat or that Declarant elects to include within the Project;
  - (b) Any buildings, Dwellings, or structures upon all or any portion of any Additional Land added to the Project; and
  - (c) Any other buildings, structures, or improvements that Declarant desires to construct on the Project, or any other real estate owned by Declarant, regardless of whether the same ever becomes part of the Project.

**15.2 Expandable Project.** The Declarant reserves the right and option to expand the

Project by the annexation of Additional Land, or to contract the Project by the withdrawal of currently encumbered land, in accordance with the provisions of this Section.

(a) The Project may be expanded by the addition of other real property designated by Declarant, such real property or portions thereof where applicable being referred to as "Additional Land".

(b) Expansion or contraction of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

(c) Declarant's right to expand or contract the Project shall not expire until the Declarant elects in writing to not add Additional Land to the Project or the Control Period ends.

(d) Additional Land may be added or withdrawn in total or in part, in any order, by using any procedure or manner as Declarant may determine.

(e) To submit or withdraw Additional Land to or from the Project, the Declarant shall record a Supplemental Declaration in the office of the Washington County Recorder setting forth that an expansion or contraction of the Project has occurred. Such Supplemental Declaration shall include: (i) a description of the Additional Land added or withdrawn from the Project; and (ii) shall reference this Declaration and state that the provisions of this Declaration apply to the Additional Land, or that the withdrawn land is no longer subject to the provisions of this Declaration.

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

(a) the right to maintain sales offices, model Dwellings, and signs advertising the Project or any Dwelling at any location in the Project;

(b) the right to use easements throughout the Common Areas as set forth in this Declaration;

(c) the right to dedicate the roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;

(d) the right to transfer Common Areas, including parks, trails, open space or other parcels of real property to the local government or municipality;

(e) the right to designate parcels for religious use and convey title to those properties to religious institutions;

(f) the right to convert any part of the Project to a different regime of residential or commercial ownership;

(g) the right to create or designate additional Common Area or Limited Common Area within the Project;

(h) the right to be reimbursed by the Master Association for any expenses incurred in constructing amenities or Common Area improvements within the Project;

(i) the exclusive right to act as the Board of Directors, or appoint or remove Board

members during the Control Period;

(j) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;

(k) the right to set all Assessments for the Master Association including Regular, Special, Individual and Benefit Assessment Area Assessments;

(l) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;

(m) the right to withdraw land from the Project at any time during the Control Period;

(n) the exclusive right to amend the Declaration, Bylaws, Plat and Rules of the Master Association without approval from any Members;

(o) the right to create, amend, change, or modify any Plat, subject to necessary approvals from any applicable municipality or government agency;

(p) the right to cast all required votes on behalf of all Owners for the approval of a transfer or conversion of the Common Area as may be required by Utah State law;

(q) the right to designate Exempt Lots;

(r) the right to create Benefit Assessment Areas and assign Lots thereto;

(s) the right to lend money to the Association and be reimbursed pursuant to the terms of any contract entered into governing the same;

(t) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;

(u) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and

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

**15.4 Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the expiration of the Control Period. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

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

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

Common Area as originally constructed or created by Declarant.

15.7 **Transfer of Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person or Builder in whole or in part through a written agreement; provided however, all such assignment made during the period of time the Development Lease remains in effect shall be subject to SITLA approval, which approval may not be unreasonably withheld. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor or designated Builder assignee. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Washington County Recorder.

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

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

15.10 **Easements Reserved to Declarant.**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

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

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

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

(f) Declarant further reserves unto itself and its successors and assigns, the right at or after

the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

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

## ARTICLE XVI – DISPUTE RESOLUTION

### 16.1. Alternative Dispute Resolution Without Litigation.

(a) **Bound Parties.** The Declarant; the Master Association; the Owners; Builders; and the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim defined in subsections (b) and (c), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

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

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association or ACC under the Design Guidelines and other provisions hereof, which shall not be subject to review and shall not be subject to this Article.

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

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VII of this Declaration (relating to the Design Guidelines);
- (iii) any suit that does not include the Declarant, any affiliate of the Declarant, or



the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

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

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

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

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

**16.2. Dispute Resolution Procedures.**

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

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

(v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

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

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

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator

providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

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

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

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

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

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

- (a) The Right to Cure period set forth in Section 16.2(b) above has expired;
- (b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total Allocated Interests of the Association:
  - (i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 16.4(a) and (b) below.
- (c) the Master Association provides each Owner with the items described in Section 16.4(a) and (b), below;
- (d) the Master Association establishes a trust account, described in Section 16.4© below;  
and
- (e) the Master Association first goes through the procedures described in Section 16.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and

proposed legal action.

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

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

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

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

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

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

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

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

(a) A written notice stating:

(i) that the Master Association is contemplating legal action;

(ii) the percentage vote required for approval of the litigation;

(iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;

(iv) a description of the claims that the Master Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

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

(i) The likelihood that the legal action will succeed;

(ii) The likely amount in controversy in the legal action;

(iii) The likely cost of resolving the legal action to the Master Association's satisfaction; and

(iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Lot buyer's ability to obtain financing for a Lot due to a pending legal action.

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

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

Association shall:

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

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

**16.5 Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

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

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

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

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

**16.10 Neighborhood Association Developers.** Declarant shall not be considered the developer of any Neighborhood Association or of any development, building, or structure constructed within the Cottonwood Community Project unless the Declarant explicitly assumes such duties.

#### **ARTICLE XVII - INTERPRETATION, CONSTRUCTION, & APPLICATION**

**17.1 No Waiver.** No delay or failure by the Master Association or by any Owner to enforce any Term and Condition, restriction, right, remedy, power, or provision herein contained, or contained in other Governing Documents, in any certain instance or on any particular occasion (or partial

exercise thereof) shall be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Term and Condition, restriction, right, remedy, power, or provision. No Master Association delay or failure to demand strict adherence to the terms, restrictions or provisions of the Governing Documents shall be deemed to constitute a course of conduct inconsistent with the Master Association's right at any time, before or after an Owner violation or breach, to demand strict adherence to the Terms and Conditions, restrictions, or provisions of this Declaration or other Governing Document.

**17.2 Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, the Bylaws, and then the Rules. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

**17.3 Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Master Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

**17.4 Cumulative Remedies.** All rights, options, and remedies of the Master Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Master Association and the Owners shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.

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

**17.6 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a mixed-use community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Declarant, the Master Association, any Owner, or any other Person subject to their terms.

**17.7 Applicable Law.** The Master Association is specifically made subject to the Act and Utah law. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Master Association or the Project unless they are applicable as a matter of law or unless the Master Association makes those amendments applicable by amendment to the Declaration.

**17.8 Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

17.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Master Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Declarant, Master Association, and Board shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

#### ARTICLE XVIII - GENERAL PROVISIONS

18.1 **Enforcement.** The Declarant, the Master Association, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.

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

18.3 **Attorney Fees.** If the Master Association utilizes legal counsel to enforce or interpret (i.e. defending against declaratory actions) any Term and Condition, or after an Owner communicates or demonstrates an intent not to comply with a Term and Condition, the Master Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

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

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

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

**18.5 Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may also use any other method allowed under Utah law and the Utah Revised Nonprofit Corporation Act to obtain votes without a meeting.

**18.6 Use of Funds Collected by the Association.** All funds collected by the Master Association, including Assessments and contributions to the Master Association paid by the Owners, if any, shall be held by the Master Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Master Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

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

**18.8 Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Master Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Master Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Master Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

**18.9 Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Master

Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's Allocated Interest shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

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

**18.11 Security.** The Declarant and the Master Association shall in no way be considered an insurer or guarantor of security from criminal conduct within or relating to the Project, including any Common Area that the Master Association may have an obligation to maintain. The Master Association shall not be held liable for any loss or damage to Owners or their personal property for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. By purchasing a Lot in the Project and/or residing in the Project, Owners and Occupants agree that the Master Association and the Declarant are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property, to the extent any such damages are not covered by insurance. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE DECLARANT HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

**18.12 Fair Housing Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Master Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under State or Federal Fair Housing Acts, to accommodate a Person with a disability (as defined by State or Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area and Facilities, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

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

\* \* \* \*





IN WITNESS WHEREOF, the undersigned hereby approves and consents to the recording of this Master Declaration as of this 14th day of September, 2022:

THE STATE OF UTAH, ACTING  
THROUGH THE SCHOOL AND  
INSTITUTIONAL TRUST LANDS  
ADMINISTRATION

By: [Signature]  
Name: Kyle A. Pasley  
Its: Managing Director

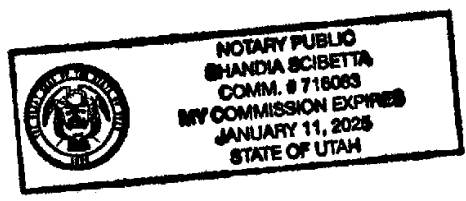
Approved as to Form:

By Chris Shiraldi  
Special Assistant Attorney General

STATE OF UTAH                    )  
  ) ss  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 14th day of September, 2022, by Kyle Pasley, the Managing Director of STATE OF UTAH, ACTING THROUGH THE SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION on behalf of the State of Utah, School and Institutional Trust Lands Administration.

Notary Public [Signature]



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Beginning at a point being South 00°32'42" East 1,022.12 feet along the center section line and East 265.66 Feet from the North Quarter Corner of Section 7, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

- thence South 81°01'28" East 113.20 feet;
- thence North 08°58'32" East 15.56 feet;
- thence North 84°31'48" East 66.62 feet;
- thence Southeast 37.80 feet along an arc of a 25.00 foot radius curve to the left (center bears South 84°23'49" East, long chord bears South 37°42'38" East 34.30 feet with a central angle of 86°37'39");
- thence South 81°01'28" East 82.56 feet;
- thence East 8.08 feet along an arc of a 172.50 foot radius curve to the left (center bears North 08°58'32" East, long chord bears South 82°22'00" East 8.08 feet with a central angle of 02°41'04");
- thence South 06°17'28" West 130.33 feet;
- thence South 09°02'10" West 357.13 feet;
- thence South 10°17'26" East 112.43 feet;
- thence South 15°37'06" East 26.22 feet;
- thence South 53°08'47" East 97.90 feet;
- thence North 45°58'06" East 175.32 feet;
- thence Northeast 42.16 feet along an arc of a 77.50 foot radius curve to the left (center bears North 44°01'54" West, long chord bears North 30°23'05" East 41.64 feet with a central angle of 31°10'02");
- thence North 14°48'04" East 162.89 feet;
- thence South 75°11'56" East 150.00 feet;
- thence South 14°48'04" West 23.26 feet;
- thence South 75°11'56" East 95.18 feet;
- thence South 17°42'52" West 3.50 feet;
- thence South 14°48'04" West 33.98 feet;
- thence South 75°11'56" East 96.19 feet;
- thence South 13°12'27" West 25.56 feet to the Northerly corner of Highland Park Phase 1 at the Coral Canyon Community as found at the Washington County Recorder's Office;
- thence Southwesterly the following (3) courses along the Northerly line of said Highland Park Phase 1 at the Coral Canyon Community;
- thence Southwest 264.03 feet along an arc of a 467.50 foot radius curve to the right (center bears North 81°54'29" West, long chord bears South 24°16'17" West 260.54 feet with a central angle of 32°21'32");
- thence South 40°27'03" West 267.97 feet;
- thence South 72°56'16" West 685.35 feet;
- thence North 40°28'45" West 327.21 feet;
- thence North 46°25'46" West 171.31 feet;
- thence North 04°14'38" West 576.08 feet;
- thence North 13°25'06" West 148.88 feet;
- thence North 76°34'54" East 541.19 feet to the point of beginning.

**EXHIBIT B**  
**BYLAWS OF**  
**COTTONWOOD COMMUNITY ASSOCIATION**

These BYLAWS OF COTTONWOOD COMMUNITY ASSOCIATION are effective upon recording in the Washington County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

**RECITALS**

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

B. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Master Association and the Owners, to provide for the ability to effectively govern and operate the Master Association and the planned development Project known as Cottonwood Community and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I**  
**DEFINITIONS**

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

**ARTICLE II**  
**APPLICATION**

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

**ARTICLE III**  
**OWNERS**

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month,

date, and time for the Annual Meeting. Annual Meetings shall not be required during the Control Period, but the Declarant may hold Annual Meetings at its discretion.

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

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

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

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

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

3.7 **Quorum.** Any number of Owners present in person or by proxy at a meeting called and held in compliance with the requirements of these Bylaws, shall constitute a quorum for the transaction of business and adoption of decisions. The vote of the Owners representing a majority of the Allocated Interest of the Owners in attendance in person or by proxy, shall decide any question

or action brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration (as amended), or these Bylaws require a fixed percentage of Owners' Allocated Interests to approve any specific action (e.g., amending Governing Documents), that percentage shall be required to approve such action.

3.8 **Proxies.** At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Master Association shall be in writing, dated, and signed by such Owner. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall make a record of all proxies in the meeting minutes.

3.9 **Votes.** Owners shall be entitled to vote on each matter submitted to an Owner vote in person or by proxy, or by any type of written or electronic ballot. Owner votes shall be equivalent to the Allocated Interest of each Lot of such Owner. The Declarant shall be entitled to a vote equal to fifty (50) times the Allocated Interest assigned to each Lot the Declarant owns in the Project. The affirmative vote of a majority of the votes entitled to be cast by the Declarant and Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, or the Acts. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are current at least 48 hours prior to the start of the meeting shall be entitled to vote.

3.10 **Election Districts.** In order to promote representation from all areas within the Project, the Association may establish Election Districts for the purpose of electing Board Members. Each Election District may consist of one or more Neighborhood Associations and one or more Lots that are not part of a Neighborhood Association. Each Election District may elect the number of Board member positions as assigned to the Election District in the Declaration or Supplement or amendment thereto. Each Election District shall have the right to elect at least one Board member and the total number of Election Districts within the Project shall not exceed the total number of Board members to be elected pursuant to these Bylaws. Unless or until Election Districts are established, the Owners within the Project shall vote on Board member elections according to each Owner's Allocated Interest.

3.11 **Establishment of Election Districts.** Election Districts may be established by the Declarant prior to the expiration of the Control Period by filing with the Master Association and recording a Supplement or amendment to the Declaration identifying the Lots and/or Neighborhood Associations comprising each Election District. The Declarant, acting alone, may amend and change

Election District designations at any time prior to the expiration of the Control Period.

After the expiration of the Control Period, the Master Association shall have the right to amend designated Election Districts upon the vote of a majority of the Board members and upon approval of a majority of the Allocated Interest of all Owners within the Master Association. Any such approved Supplement or amendment to the Declaration thereto shall become effective upon recording.

Any and all portions of the Project that are not assigned to a specific Election District shall constitute a single Election District.

3.12 **Election District Voting.** The Master Association shall conduct Election District voting for each open Board Member position at the Annual Meeting. If the Master Association is unable to hold Board Member elections at the Annual Meeting, then a Special Meeting shall be held in accordance with these Bylaws whereby the Members within each Election District shall vote on Board Member candidates for election to the Master Association Board. Each Member's vote in the Election District voting shall be equal to their Allocated Interest. Board Members will be elected by a simple majority vote of the Owners from the Election District present at the meeting. If two (2) candidates have equal votes, then the issue shall be resolved by a coin toss. All Board Member elections shall be subject to any and all appointment powers granted to the Declarant in the Declaration.

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

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

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

#### ARTICLE IV BOARD OF DIRECTORS

4.1 **Powers.** The Project and the business and affairs of the Master Association shall be governed and managed by the Board of Directors. The Board may exercise business judgment and

all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The Board of Directors shall be composed of an odd number of no less than three (3), but no more than seven (7) Persons, as determined by the Declarant or the currently elected Board prior to voting. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Control Period, the Director qualification requirements of these Bylaws shall not apply and the Declarant shall act as the Board and may exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Control Period, Board Members shall be appointed by Declarant. Following the Control Period, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted.

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

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

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

4.7 **Meeting Notice.** Notice of Board meeting date, time, and location shall be given personally, by email, by text, or by telephone, to all Board Members and any Owners who have requested notice at least two business days in advance of the meeting. Board Members may waive their right to notice of a meeting. By unanimous consent of the Board, special meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice form a Board member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given



notice along with the Board members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific time period during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.9 **Quorum and Manner of Action.** A majority of the Board Members shall constitute a quorum for the transaction of business at any Board meeting. The act of a majority of the Board Members present at any meeting at which a quorum is present, and for which proper notice was provided, shall be the act of the Board. Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

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

- (a) Consult with legal counsel, or to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

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

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

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

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

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

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

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

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

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

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

## ARTICLE V OFFICERS

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

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

5.3 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may determine.

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

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

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

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

5.9 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and Board meeting. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

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

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each committee shall keep a record of its proceedings and shall regularly report such records to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

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

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

## ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby agree to defend, indemnify, and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the

foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to defend, indemnify, or reimburse such person, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

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

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

7.4 **Settlement by Association.** The right of any person to be defended and/or indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and/or indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## **ARTICLE VIII RULES AND REGULATIONS**

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

## **ARTICLE IX AMENDMENTS**

9.1 **Amendments by Declarant.** During the Control Period or so long as the Declarant owns one or more Lots in the Project or any Additional Land, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarant's unilateral amendment right as designated herein may continue past the expiration of the Control Period. No other amendment shall

be valid or enforceable during the period Declarant owns at least one Lot or any Additional Land unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Lot or any Additional Land shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Washington County Recorder.

9.2 **Amendments by Association.** After the Declarant has annexed all Additional Land and has sold all of the Lots to unaffiliated third parties, and the Control Period has expired, the Bylaws may be amended by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the Allocated Interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Washington County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

#### **ARTICLE X MISCELLANEOUS PROVISIONS**

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

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

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

\* \* \* \*

**IN WITNESS WHEREOF**, the Declarant has executed and adopted these Bylaws on behalf of the Association this 14<sup>TH</sup> day of SEPTEMBER, 2022.

**DECLARANT**  
**COLE WEST HOME, LLC**  
a Utah limited liability company

By: Chris Winter

Name: Chris Winter

Its: Authorized Agent

STATE OF UTAH )  
                                  ) ss.  
COUNTY OF WASHINGTON )

On the 14<sup>TH</sup> day of SEPTEMBER, 2022, personally appeared before me  
CHRIS WINTER, who by me being duly sworn, did say that she/he is  
an authorized representative of Cole West Home, LLC, and that the foregoing instrument is signed  
on behalf of said company and executed with all necessary authority.

Notary Public: CM

