

**WHEN RECORDED PLEASE RETURN TO:**  
**Ivory Development, LLC**  
**Christopher P. Gamvroulas**  
**Salt Lake City, UT 84117**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

**FOR**

**THE GARDENS  
AT  
IVORY RIDGE**

**IN**

**LEHI, UTAH**

**THIS DELCARATION INCLUDES IMPORTANT SPECIAL DELCARANT RIGHTS IN SECTION 20,  
AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION  
PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND IMPORTANT  
WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 21.**

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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
THE GARDENS  
AT  
IVORY RIDGE**

**RECITALS**

- A. Ivory Development, LLC is the developer and declarant of the Ivory Ridge Planned Mixed-Use Development located in Lehi, Utah.
- B. The Development is a residential and commercial mixed-use master-planned community which includes multiple types of housing and recreational amenities.
- C. A Master Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for the Ivory Ridge Properties, Swim and Tennis Club, a part of the Ivory Ridge Planned Mixed Use Development, was recorded with the Office of Recorder for Utah County, Utah Utah County Recorder on November 14, 2005, as Entry No. 152736:2006 (the “Initial Master Declaration”).
- D. The Initial Master Declaration authorized, *inter alia*, the Declarant’s development of The Gardens at Ivory Ridge, as part of the Ivory Ridge mixed-use master-planned community.
- E. The Declaration of Covenants, Conditions, Restrictions, and Easements for The Gardens at Ivory Ridge, a part of the Ivory Ridge Planned Community Development, was recorded with the Office of Recorder for Utah County, Utah on February 18, 2011, as Entry No. 14779:2011 (the “Initial Gardens Declaration”).
- F. By instrument titled “First Supplement to the Declaration of Covenants, Conditions and Restrictions for The Gardens at Ivory Ridge Plat B,” recorded with the Office of Recorder for Utah County, Utah on May 17, 2012, as Entry No. 40970:2012, The Gardens at Ivory Ridge was expanded to 53 Units in accordance with Section 15 of the Initial Gardens Declaration.
- G. The First Amendment to the Declaration of Covenants, Conditions and Restrictions for The Gardens at Ivory Ridge was recorded with the Office of Recorder for Utah County, Utah on August 20, 2013, as Entry No. 79689:2013, consistent with the rights and authority reserved to the Declarant in Section 14(d) of the Initial Gardens Declaration.
- H. Section 14(d) of the Initial Gardens Declaration provides, *inter alia*, that the Initial Gardens Declaration may unilaterally be amended by the Declarant at any time prior to the expiration of the period of Declarant’s control (as defined in the Initial Gardens Declaration for The Gardens Ridge), provided that any such amendment does not materially adversely affect the substantive rights or title of any owner with the affected owner’s consent.

- I. Consistent with the rights and authority set forth above, the Declarant now desires to further unilaterally amend and restate the Initial Gardens Declaration, as supplemented and amended, to: (a) conform to recent changes to the Utah Community Association Act and other Utah laws; (b) clarify the governance structure and standards and procedures for administration, maintenance, and preservation of The Gardens at Ivory Ridge as a distinct neighborhood and community sub-association within the Ivory Ridge mixed-use master-planned development; (c) facilitate completion of The Gardens at Ivory Ridge; and (d) clarify and define the rights of the Association, the Owners, the Master Association, and the Declarant.
- J. This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Gardens at Ivory Ridge is effective as of the date this instrument is recorded with the Office of Recorder for Utah County, Utah.
- K. The Terms and Conditions established herein are for the mutual benefit and burden of The Gardens at Ivory Ridge, the Association, and all current and future Owners, Occupants, Lenders and others acquiring any interest in The Gardens at Ivory Ridge.
- L. This Amended and Restated Declaration for The Gardens at Ivory Ridge shall run with the land and shall be binding upon the Declarant, the Owners, and any future Owners of any portion of The Gardens at Ivory Ridge and his/her heirs, successors, and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of The Gardens at Ivory Ridge. By taking title to a Unit in The Gardens at Ivory Ridge, each Owner joins in and accepts the intent, purpose, and objectives of this Amended and Restated Declaration for The Gardens at Ivory Ridge and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant’s development of The Gardens at Ivory Ridge, and accepts the burdens that accompany these benefits.
- M. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, this Declaration is adopted by the Declarant, pursuant to the rights and authority described above.

**ARTICLE 1**  
**DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code Annotated (“Utah Code Ann”).
- 1.2 “Allocated Interest” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions in Sections 6.2(d) and 20.6 herein. Each Unit is assigned one equal vote,

subject to the limitations on voting set forth in this Declaration and other Governing Documents.

- 1.3 “Articles” shall mean and refer to the Articles of Incorporation for the Association or the chartering document of any other legal entity, if any, shall be formed for the Association.
- 1.4 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner and/or a Unit by the Association, as provided for in this Declaration, and shall include, without limitation, Benefitted Common Area Assessments and Service Area Assessments. The term “Assessments” shall also include any monetary charge imposed or levied on an Owner and/or Unit by the Master Association pursuant to the Master Declaration.
- 1.5 “Association” shall mean and refer to The Gardens at Ivory Ridge Association, the membership of which shall include each Owner in The Gardens. The Association has been organized and formed under the laws of the State of Utah as a nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity, or if the Owners act as a group without legal organization, “Association”, as used in this Declaration, shall refer to that entity or group.
- 1.6 “Benefitted Common Area” shall mean and refer to any real property and improvements designated by the Declarant or the Association in a Supplement to Declaration or Plat or in another recorded instrument as Benefitted Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefitted Common Area Assessments attributable thereto, to one or more, but less than all, of the Units within the Project, and which is, or will be, conveyed to the Association, or as to which the Association will be granted the rights and obligations primarily for the benefit of a particular Unit within the Project. The Supplement to Declaration, or other recorded instrument establishing the Benefitted Common Area, shall identify the Units assigned to that Benefitted Common Area, and shall further identify whether the purpose of the Benefitted Common Area is for exclusive use of the Owners and Occupants of the assigned Units and payment of the Benefitted Common Area Assessments, or only for the purposes of paying the Benefitted Common Area Assessments attributable thereto.
- 1.7 “Benefitted Common Area Assessments” shall mean and refer to assessments levied against the Units assigned to a Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.
- 1.8 “Benefitted Common Area Expenses” shall mean and refer to the estimated and actual expenses which the Association incurs, or expects to incur, to operate, maintain, repair and replace a particular Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.
- 1.9 “Management Committee” shall mean and refer to the body with primary authority to manage the affairs of the Association, which may also commonly be referred to as a Management Committee of Directors or Board.
- 1.10 “Builder” shall mean and refer to Ivory Homes, Ltd.

- 1.11 “Building” shall mean and refer to any of the structures constructed within the Project, including, the Units, as shown on The Gardens Plats A and B.
- 1.12 “Bylaws” shall mean and refer to the Amended Bylaws of The Gardens at Ivory Ridge Association, attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.13 “City” shall mean and refer to Lehi City.
- 1.14 “Ivory Swim and Tennis Club” shall mean and refer to the recreation improvements constructed in the Development which includes, *inter alia*, the swimming pool and clubhouse with bathrooms, showers and changing rooms, and the tennis facility managed and maintained by the Master Association, the types of membership interests in and fees for are defined more fully in the Master Declaration and the Master Association Rules.
- 1.15 “Common Area and Facilities” shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or property of the Master Association, or designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat, including any area designated as open space; (b) all Project improvements exclusive of the Units; (c) all utility installations, systems, and equipment connected with, or in any way related to, the furnishing of utilities for the common use and/or for the Common Area and Facilities; (d) all roads, streets, lanes, alleys, and cul-de-sacs within the Project not dedicated to the City or designated as Benefitted Common Area; and (e) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project’s existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned by the Association.
- 1.16 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities; (b) landscaping maintenance for the Lots and park strips within the Project and related services provided by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association, as provided for or allowed under the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.17 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Development or, at a minimum, the standards initially established by the Declarant and/or described in

this Declaration, the Rules, and Management Committee resolutions. The Community-Wide Standards may or may not be set forth in writing.

- 1.18 “Development” shall mean and refer to the Ivory Ridge Planned Mixed-Use Development located in Lehi, Utah, developed by the Declarant.
- 1.19 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project. The term “Governing Documents” shall also include the Master Declaration, the Master Association Bylaws, the Master Association Rules, and the Master Association Articles of Incorporation.
- 1.20 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.21 “Lot” shall mean and refer to any of the separately identified parcels on the Plat, which may be independently owned and conveyed, and is intended for development, use and occupancy as an single-family residence.
- 1.22 “Manager” shall mean and refer to any Person engaged by the Management Committee to manage the Project.
- 1.23 “Master Association” shall mean and refer to the Ivory Ridge Master Property Owners Association, Inc. The Master Association has been incorporated as a nonprofit corporation. Notwithstanding the foregoing, if the Master Association members 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.
- 1.24 “Master Declaration” shall mean and refer to the Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ivory Ridge, including all attached exhibits other than any Bylaws, as the same may be amended from time to time.
- 1.25 “Master Association Rules” shall mean and refer to the rules and regulations adopted by the Master Association.
- 1.26 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.27 “Owner” shall mean and refer to the Person or Persons, who are vested with record title to a Unit within the Project, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Utah County, Utah. The term “Owners” shall mean and refer to more than one Owner. The terms “Owner” and “Owners” shall not include a mortgagee or trustee for or beneficiary of a deed of trust. The term “Owner” also shall not include the Declarant.



- 1.28 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.
- 1.29 “Plat” shall mean and refer to the record of survey maps of The Gardens, including, specifically, The Gardens Plat A and The Gardens Plat B, recorded, respectively, with the Office of Recorder for Utah County, Utah, and all respective amendments and supplements thereto.
- 1.30 “Project” shall mean and refer to The Garden at Ivory Ridge and all structures and improvements thereon, including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time and in the event that any Supplement to Declaration and plat map for additional land is recorded.
- 1.31 “Property” shall mean and refer to the real property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.32 “Rules” shall mean and refer to the rules and regulations adopted by the Association for The Gardens at Ivory Ridge.
- 1.33 “Service Area” shall mean and refer to a group of Units designated as a separate Service Area pursuant to this Declaration for the purpose of receiving services or benefits from the Association which are not provided to all Units within the Project. A Service Area may include noncontiguous Units. A Unit may be assigned to more than one Service Area.
- 1.34 “Service Area Assessments” shall mean and refer to assessments levied against the Units and/or Owners in a particular Service Area to pay for Service Area Expenses.
- 1.35 “Service Area Expenses” shall mean and refer to the estimated and actual expenses which the Association incurs, or expects to incur, for the benefit of Units within a particular Service Area, which may include amounts for reserves for repairs and replacements and capital improvements.
- 1.36 “Project Improvements” shall mean and refer to all improvements within the Project installed outside of the boundaries of Units or within easements, as identified on the Plat, including, *inter alia*, all construction required to comply with any conditions of the City or other governmental agencies for the approval of the Plat and/or the Project.
- 1.37 “Supplement to Declaration” shall mean and refer to any amendment or supplement to the Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions, and restrictions contained in the Declaration. A Supplement to Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area and assigning Units thereto. A Supplement to Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

- 1.38 “Terms and Conditions” shall mean and refer to any or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.39 “The Gardens” shall mean and refer to The Gardens at Ivory Ridge residential subdivision project in Lehi, Utah, as reflected on the Plat, which is part of the Development.
- 1.40 “Unit” shall mean and refer to a dwelling unit or a single-family residence within the Project, including the Lot, depicted as a separately identified parcel on the Plat, which may be independently owned and conveyed, and is intended for development, use and occupancy as an single-family residence. The term “Unit” does not include Common Area and Facilities, common property of the Master Association, Benefitted Common Area or property dedicated to the City or the public.

## **ARTICLE 2** **THE PROJECT**

- 2.1 Binding Effect of Governing Documents. The Declarant hereby declares that the Project is part of the Development, subject to the Master Declaration, and that the Project and all of the Units therein shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land, and shall be binding upon, and inure to, the benefit of the Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 Nature of the Project. The Project is a residential planned-unit development of detached, single family residences, and is part of the Ivory Ridge master-planned mixed-use development. The Project includes 53 Units, open space, garden areas, roadways, lanes, and parking areas. The Project is not a cooperative and is not a condominium.
- 2.3 Project Name. The Project is named “The Gardens at Ivory Ridge.” Notwithstanding, the name used for the Project by the Master Association or other neighborhood sub-associations within the Development may be different than the name identified in this Declaration and on the Plat.
- 2.4 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporations and Commercial Code.

**ARTICLE 3**  
**DESCRIPTION OF THE UNITS, COMMON AREA AND FACILITIES, AND**  
**ALLOCATED INTERESTS**

3.1 The Unit

- (a) The distinct Lot number or Unit number that identifies the Lot or Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification herein and/or on the Plat, each Unit generally consists of the Lot and all structures on or within the boundary of the Lot, including, but not limited to, all interior and exterior walls, garages, roofs, foundations, and fixtures, and all installations related thereto. Subject to boundary lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (i) is an integral part of the Unit structure (such as a porch, landing, patio, balcony or deck); or (ii) was constructed as part of the original construction of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Unit. Additionally, any mechanical equipment, systems or other appurtenances located outside of a Unit, but designated and designed to serve only that Unit, shall be considered part of the Unit.
- (d) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be the first installation of foundations, framing, wallboard, etc. If the Management Committee, in its sole discretion, determines that the then-current construction varies from the original as-built construction, then the Association, at the expense of the Association or the Owner, in the Management Committee's discretion, may require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Management Committee shall consider: (i) whether the Owner caused the nonconforming construction; (ii) whether the Owner sought or obtained Management Committee approval for any nonconforming construction, regardless of whether any such approval was valid or not; (iii) whether other Owners engaged in similar nonconforming construction; (iv) the overall culpability of the Owner as it relates to the nonconforming construction; and (v) the reason for the nonconforming construction.

3.2 Membership Interests in the Ivory Swim and Tennis Club. Subject to the reservation of Declarant rights in the Master Declaration, each Unit is granted a membership interest, subject, however, to further restrictions, rules and user fees.

- 3.3 Allocated Interest of Each Unit in the Total Voting Interest of the Association. The Owners of each Unit shall be entitled to vote on all matters related to the Association that Owners are permitted or required to vote or approve. Each Unit shall have an equal vote. Any difference in square footage, location, size, value or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.
- 3.4 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, the Plat shall control, except to the extent provided for on the Plat, or as otherwise provided by the application of controlling law.

**ARTICLE 4**  
**ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 4.1 Organization of Association. The Association shall serve as the organizational body for the Owners.
- 4.2 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and as provided by law.
- 4.3 Legal Organization. The Association is, and at all times shall be, organized as a Utah non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents to the extent possible under the applicable law, shall be consistent with the terms in this Declaration and the Bylaws attached hereto, or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason, as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of this Declaration and the Bylaws.
- 4.4 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association, so long as such Owner has an ownership interest in a Unit, and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 4.5 Availability of Documents.
  - (a) Unless otherwise allowed by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting

minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.

- (i) The term “available” as used in Section 4.5(a) above shall mean available for inspection or copying at the Association’s principle place of business or the offices of the Manager within five (5) business days after receiving a proper written request, during normal business hours and under other reasonable conditions, except that annual financial statements requested by an Owner may be provided to an Owner within fifteen (15) days of receiving such request.
  - (ii) Notwithstanding anything to the contrary in this Section 4.5, the Association may require that the Owner strictly comply with any and all statutory provisions or other legal requirements applicable to providing this information before providing it.
  - (iii) If an Owner elects to have the Association produce copies of requested documents or records, the Association may assess the Owner reasonable copying costs consistent with § 57-8a-227(4)(b)(ii) of the Act.
- (b) Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Association within thirty (30) days of receipt of a written request.
- (c) Notwithstanding anything to the contrary in this Section 4.5, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Management Committee, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.

4.6 Management Committee. The governing body of the Association shall be a Management Committee elected pursuant to the Bylaws, subject to Article 20 herein. The Management Committee shall consist of three (3) members (each a “Management Committee Member” and director). Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Management Committee, in all instances, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. Except as may be specifically provided in this Declaration, the Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

4.7 Management Committee Members.

- (a) Qualification.
  - (i) Except as provided in Section 20.2 herein, to be eligible to serve on the Management Committee, an individual must be: (1) an Owner, or the spouse of an Owner, or an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of an Owner (*i.e.*, an authorized representative) if such Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity; and (2) current on Assessments.
  - (ii) As further detailed and explained in the Bylaws, and subject to Section 20.2 herein, at least one (1) of the Management Committee Members, at all times, must have as his/her primary residence a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Management Committee Members.
- (b) Reasonable Ongoing Requirements for Management Committee Members. The Bylaws may place reasonable obligations and requirements on existing Management Committee Members to retain their membership on the Management Committee, such as a requirement that a Management Committee Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee Member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee Members. Any Bylaw requirements adopted pursuant to this section shall not be applicable retroactively and shall not apply to any Management Committee Members on the Management Committee during the two-year term of the Management Committee Member being served when they are adopted.

4.8 Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee.

- (a) Except as provided herein or in the Bylaws, neither the Management Committee, nor any individual Management Committee Member, Officer, or Owner has authority to:
  - (i) amend or terminate any Governing Document;
  - (ii) elect or remove members of the Management Committee;
  - (iii) establish or change the qualifications, powers and duties, requirements, or terms of Management Committee Members or of the Management Committee; or
  - (iv) authorize or agree to any deviation or exception from the Terms and Conditions.

- 4.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee or anyone else) contrary to the terms of the Governing Documents, regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or taking title to a Unit in the Project, to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association, is in compliance with the terms of the Governing Documents.
- 4.10 Registration with the State. In accordance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

**ARTICLE 5**  
**GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 5.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided by law.
- 5.2 Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association, including landscape maintenance for those landscaped areas on the Lots not otherwise the responsibility of the respective Owners and landscape maintenance for the Common Areas and Facilities. This obligation includes the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities or Benefitted Common Area. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Benefitted Common Area, the Common Area and Facilities and the Project, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards. Nothing in the foregoing provisions of this Section 5.2 shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association. Notwithstanding anything in this Section 5.2 to the contrary, the Association shall be responsible for maintenance of property, if any, within the Project which it owns or which its covenants designate as being for the benefit of the Association's members.
- 5.3 Capital Improvements. After the Declarant Control Period, capital improvements shall be governed by, and subject to, the following conditions, limitations, and restrictions:
- (a) Any capital improvement to the Project that does not materially alter the nature of the Project, and which does not exceed ten percent (10%) of the current total budget, may be authorized by the Management Committee alone.
  - (b) Any capital improvement to the Project that does not materially alter the nature of the Project, but which would exceed ten percent (10%) of the current total budget,

must be authorized by Owners holding at least fifty-one percent (51%) of the total Allocated Interests in the Association.

- (c) Any capital improvement which would materially alter the nature of the Project, regardless of its cost, and prior to being constructed or accomplished, must be authorized by Owners holding at least sixty-seven percent (67%) of the total Allocated Interests in the Association and must be approved of by the Management Committee.

- 5.4 Paying Expenses. The Association shall provide for the payment of Common Expenses.
- 5.5 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents. Amounts assessed to Owners by the Master Association may be collected by the Association for the Master Association.
- 5.6 Adopting and Enforcing Rules. The Management Committee may adopt Rules for the regulation and operation of the Project. Rules, if adopted, shall be consistently and uniformly enforced. The Rules may address any issues, including those addressed in any other Governing Documents, and may include restrictions and regulations specific to any Benefitted Common Area and to any Service Area. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents, so long as the Rules do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted, or to be conducted, violates, or will violate, the Rules, shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 5.7 Hiring Managers and Delegating Responsibilities. The Association shall hire a Manager to assist the Management Committee in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents, as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- 5.8 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- 5.9 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; (b) collect rents directly from a tenant if an Owner fails to pay



Assessments; (c) suspend voting rights; (d) suspend rights to utilize the Ivory Swim and Tennis Club and/or other and common facilities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.10 Discretion in Enforcement.

- (a) Subject to the discretion afforded in this section, the Management Committee uniformly and consistently shall enforce and implement the Terms and Conditions in the Governing Documents.
- (b) The Management Committee shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (i) whether to compromise a claim made by or against the Management Committee or the Association; and (ii) whether to pursue a claim for an unpaid Assessment.
- (c) The Association shall not be required to take enforcement action if the Management Committee, after fair review and acting in good faith, and without conflict of interest, determines that, under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a technical violation has, or may have, occurred, and the violation is not material as to a reasonable Person, or does not justify expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (d) Subject to Subsection 5.10(e), if the Management Committee decides, under Subsection 5.10(c) above, to forego enforcement, the Association is not prevented from later taking enforcement action.
- (e) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking, or not taking, enforcement action.

5.11 Reserve Fund. The Management Committee shall maintain a reserve fund, and shall obtain and update a Reserve Analysis, as required in Article 17 of this Declaration.

5.12 Preventing Conflicts with Service Providers and Vendors. Subject to the exemptions in Section 20.15 herein, the Association shall not permit any paid services or materials obtained by the Association, reasonably valued at more than \$1,000, to be performed or provided by: (a) any Management Committee Member; (b) any relative of any Management Committee Member, Manager, or of any officer, employee, or owner of the Manager; or (c) any business or entity in which any Management Committee Member, Manager, or employee, officer, or owner of any Manager, or any relative of the same, is employed or has more than a 10% ownership or beneficial interest, without prior written disclosure of the relationship to the Management Committee and a written agreement executed by the parties. For the purpose of this Section 5.12, a relative is any individual

known to be related by blood or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.

- 5.13 Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner, or group of Owners, or in case a hearing process is required by law. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing, and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise, or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum, for: (a) at least two weeks' notice of the hearing to the Owners; and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- 5.14 Annual Meeting. The Association shall arrange for, and conduct, an annual meeting of the Owners, as provided for in the Bylaws, and shall arrange for, and conduct, such other meetings of the Association, as shall be properly requested, pursuant to the Governing Documents or required by law.
- 5.15 Payoff Information Fees. The Association is specifically authorized to establish a fee for providing payoff information related to the transfer, refinance, or closing of a Unit. Unless otherwise provided in the Rules, the fee amount shall be \$25.00. The Management Committee may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.
- 5.16 Reinvestment Fee Covenant. Units within the Project are subject to a Reinvestment Fee upon sale or transfer of the Unit, pursuant to the Master Declaration. The Association, on behalf of the Master Association, may collect from transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "Reinvestment Fee"), as provided for in Utah Code Ann. § 57-1-46, in an amount up to one half of one percent (0.5%) of the value of the Unit at the time of the transfer, or in such other amount as may be determined by the Master Association and allowed by law.

## **ARTICLE 6**

### **BUDGETS & ASSESSMENTS**

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of management, maintenance, care, and operation of the Project, protecting and preserving the value of the Project; promoting the health, safety and welfare of the

Owners and quality of life in the Project, and in the furtherance of carrying out or satisfying any other duty or power of the Association.

6.2 Budget and Regular Assessment.

- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year.
- (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget also shall include an estimate of Benefitted Common Area Expenses for each Benefitted Common Area, if any, and an estimate of Service Area Expenses for each Service Area, if any, and may include contingencies and other estimates, as the Management Committee deems appropriate.
- (c) The Management Committee shall make available a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
- (d) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit, subject to the Declarant rights in Section 20.6 herein.
- (e) The Management Committee shall determine the amount of Benefitted Common Area Assessments to be paid by the Owners of the Units assigned to each such Benefitted Common Area by dividing the total budget amount for the each of the Benefitted Common Area Expenses by the number of Units assigned to each such Benefitted Common Area.
- (f) The Management Committee shall determine the amount of Service Area Assessments to be paid by the Owners within each Service Area by dividing the total budget amount for each Service Area Expenses by the number of Units assigned to each such Service Area.

6.3 Payment of Assessments. Unless otherwise established by the Management Committee, and communicated to each Owner, each Owner shall pay to the Association the Owner's regular annual Assessment, Benefitted Common Area Assessment and Service Area Assessment, as may be the case, on a monthly installment basis, as the Management Committee or the Manager may determine.

6.4 Adjustments to Budget and Regular Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the

- budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.
- 6.5 Adjustments to Benefitted Common Area Assessments or Service Area Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet Benefitted Common Area Expenses or Service Area Assessments, for any reason, the Management Committee may then revise the appropriate budget and each Owner's share of the new budget total based on the Owner's proportional share of the Benefitted Common Area Expenses or the Service Area Expenses, as the case may be. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner thereafter shall pay to the Association the Owner's adjusted Benefitted Common Area Assessment or adjusted Service Area Assessment.
- 6.6 Personal Obligation for Assessment. Each Owner, by taking title to a Unit, and regardless of any lien rights or lack thereof, personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments, as provided for in the Governing Documents, including any Benefitted Common Area Assessments and Service Area Assessments, and including any Assessments assessed and unpaid prior to the date the Owner acquired title to the Unit. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due.
- 6.7 Capital Improvements. Amounts for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.
- 6.8 Percentage Assessments. Except as otherwise provided herein, and except for special Assessments to individual Units, Benefitted Common Area Assessments and Service Area Assessments, Assessments shall be allocated to Owners based on the Allocated Interest of each Unit.
- 6.9 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt Rules for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions of this Master Declaration. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner, or an error in any such statement (other than a Certificate of Payment), shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.10 Certificate of Payment. The Association, within ten (10) business days after written demand by an Owner or such other Person for whom an Owner has given written permission in a form acceptable to the Association, shall furnish a written statement or

certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each written statement or certificate is conclusive in favor of a Person who relies on the written statement in good faith. The Association is authorized to charge a reasonable fee for issuance of a written statement or certificate of payment. Unless otherwise provided in the Rules and allowed by law, the amount of the fee shall be twenty-five dollars (\$25.00). The Management Committee may increase or decrease the amount charged if a new amount is identified in the Rules and is consistent with Utah law.

- 6.11 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.12 Special Assessments to a Particular Unit. Special Assessments may be levied by the Association against a particular Unit and its Owner, or against Units within a Particular Neighborhood and their respective Owners for:
- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
  - (b) Any other charge not included in a Benefitted Common Area Assessment or Service Area Assessment designated by the Management Committee or the Manager pertaining to a particular Unit or Owner consistent with the Governing Documents;
  - (c) Fines, late fees, collection charges, and interest; and
  - (d) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.13 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project or Benefitted Common Area or in a Service Area, which benefits an individual Unit, and which can be accepted or not by the Unit's Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, at the discretion of the Management Committee.
- 6.14 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an

excess exists for a prior year. In the event that amount budgeted for any Benefited Common Area or Service Area proves to be excessive in light of the actual Benefited Common Area Expenses or Service Area Expenses, the Management Committee, in its discretion, shall either: (a) credit the excess against future Benefited Common Area Assessments for the particular Benefited Common Area with the excess, or credit the excess against future Service Area Assessments for the particular Service Area that had an excess, as the case may be; or (b) refund the excess to the Owners of the Units assigned to the Benefited Common Area that had the excess, or assigned to the Service Area that had an excess, as the case may be.

- 6.15 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 6.16 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

#### ARTICLE 7

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

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 7. Each Owner vests in the 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.
- 7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of ten dollars (\$10.00). Thereafter, additional late fee charges of ten dollars (\$10.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorneys' fees, interest (resulting in compounding of interest), late fees, and Assessments, at one-and-a-half percent (1.5%) per month. Delinquent accounts may be turned over for collection and may be assessed additional collection charges and attorneys' fees and costs.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner, and any future Owners of a Unit, are jointly and severally liable for all Assessments accruing related to that Unit prior to, and during the time, that an Owner holds title to a Unit. An

Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Unit to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this Section 7.3 is separate and distinct from any lien rights associated with the Unit.

- 7.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs, and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration, and shall have priority over all encumbrances recorded after this Declaration is recorded, unless otherwise limited by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Unit for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when: (a) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired, and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Unit, except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by, or on behalf of, the Association; and (iii) a lien for real estate taxes or governmental assessments, or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and will be added to the amount in delinquency (plus judgement interest and collection costs, if appropriate).
- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson as trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants, pursuant to Utah Code Ann. § 57-1-20 and 57-8a-302, to Melyssa D. Davidson, with power of sale, the Unit, and all improvements to the Unit, for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption provided by Utah law now in effect, or in effect from time to time hereafter.

7.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote; provided, however, that before termination of such rights, the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:

- (a) the impending termination of rights if payment is not received;
- (b) the amount(s) past due, including any interest and late charges; and
- (c) the right to request a hearing before the Management Committee.

7.9 Requiring Tenant to Pay Rent to Association.

- (a) Pursuant to, and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant occupying any Unit for which an Assessment is more than sixty (60) days past due; provided, however, that before requiring a tenant to pay lease payments to the Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:
  - (i) the Association's intent to demand the Owner's tenant pay his/her lease payments to the Association if payment of all delinquent amounts is not received within fifteen (15) days;
  - (ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and
  - (iii) that any costs of collection, including, but not limited to, attorneys' fees and other assessments that become due, may be added to the total amount due, and to be paid through collection of the tenant's lease payments.
- (b) If the Owner fails to pay the amount owing after fifteen (15) days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's tenant by delivering written notice to the tenant, in accordance with the notice requirements in the Bylaws, that:
  - (i) due to the Owner's failure to timely pay Assessments, the Association has notified the Owner of the Association's intent to collect all lease payments until the amount owing is paid, in full;
  - (ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing to the Association by the Owner is paid, in full; and
  - (iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.



- (c) The Association shall mail to the Owner a copy of the notice to be given to the tenant.
- (d) The tenant to whom notice under Section 7.9(b) is given shall pay to the Association all future lease payments, as they become due and owing to the Owner, beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the Owner is paid.
- (e) The delinquent Owner shall credit each payment that his/her tenant makes to the Association, pursuant to this Section 7.9, against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner, and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required under Section 7.9(d).
- (f) Within five (5) business days after the amount owing is paid in full, the Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Association, and a copy of said notice shall be mailed to the Owner.

7.10 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings, including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities; and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

7.11 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions herein related to the Unit that are otherwise applicable to any other Owner, including, but not limited to, obligations to pay assessments or maintain the Unit.

**ARTICLE 8**  
**GENERAL RESPONSIBILITIES OF OWNERS**

- 8.1 Responsibilities of Owners. Each Owner shall have the following responsibilities in addition to any others set forth in the Governing Documents or provided by law.
- 8.2 Maintenance of the Unit. Except to the extent that maintenance, repair, and upkeep of Unit exteriors has been assigned to the Association as part of a Service Area or otherwise, each Owner shall be responsible to maintain his/her Unit in an attractive, neat, clean, usable, safe, and sanitary condition, in accordance with the Community-Wide Standards. This obligation shall include, without limitation, maintenance, repair and/or replacement of the roof, garage, exterior walls, and any landing, deck, porch, sidewalk, and driveway, included within the boundaries of the Unit and all structural elements, fixtures, lines, pipes, equipment, systems, and other improvements within the boundary of the Unit, as well as all mechanical equipment, systems, lines, pipes, or other appurtenances located outside of the Owner's Unit, but designated and designed to serve only that Unit.
- 8.3 Association May Assume Maintenance Obligation and Assess Costs for Same. Notwithstanding anything to the contrary in Sections 8.2 above, to maintain Community-Wide Standards, the Project's design, and to protect and preserve the property values within the Project, the Association, from time to time, in the Management Committee's discretion, may undertake any of the maintenance, repair, or replacement obligations for the Unit exteriors and may assess the cost for such to the Owners.
- 8.4 Prior Authorization from Management Committee Required for Maintenance, Repair and Replacement of Unit Exterior. Notwithstanding anything in this Article 8 to the contrary, all maintenance, repairs and replacements affecting the Unit exterior, the overall appearance of the Project, or the appearance or the structural integrity of any common element or system, shall require prior written approval of the Management Committee to ensure quality of construction, and adherence to Community-Wide Standards. No Owner shall allow his/her Unit to detract from the uniform appearance and design of the Project, or the health, safety, and use and enjoyment of the Association members.

**ARTICLE 9**  
**RIGHT TO USE COMMON AREA AND FACILITIES**

- 9.1 Rights and Nonexclusive License to Use Common Area and Facilities.
- (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, and the right and nonexclusive license for the use and enjoyment of the Benefitted Common Area to which that Owner's Unit has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to, and shall pass with title to, each Unit, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities and assigned Benefitted Common Area, if any, as the Owner who's Unit the Occupant

is occupying. All such rights shall be subject to any Rules established by the Management Committee.

- (b) The Association shall have nonexclusive easements with the right of access over and across each Unit to make inspections, to prevent or mitigate damage to Common Area and Facilities or Benefitted Common Area, and to maintain, repair, and/or replace or effectuate the restoration of the Common Area and Facilities, and any other property or improvements for which the Association is responsible for maintaining, including any Benefitted Common Area or Service Area, which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities, Benefitted Common Area, and Service Area for purposes necessary for the proper operation of the Project.

9.2 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 Management Committee to be helpful in serving the Project, Units, or Unit Owners in the Project, are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities or Units, 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, irrigation 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 Unit, 7consents to such easements and rights-of-way, and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner, and those claiming by, through, or under an Owner, agree to execute, promptly, all such documents and instruments and to do such other things as may be necessary or convenient to effect the same, at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

9.3 Easements for Encroachments. If any portion of the Common Area and Facilities or any Project Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities, as a result of the manner in which the Subdivision Improvements are constructed, or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant or the Association, a valid easement

for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

9.4 Limitation on Easement—Suspension of Owner’s Rights. An Owner’s rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

- (a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner, or guests, who, at any given time, are permitted to use the Common Area and Facilities; and
- (b) 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 roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.

9.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There are no view easements or view rights appurtenant to the Project or to any Unit therein. There is no warranty concerning the preservation of any view or view plane from the Project.

**ARTICLE 10**  
**USE LIMITATIONS AND CONDITIONS**

10.1 Rules. Pursuant to 57-8a-218(15) of the Act, the requirements of 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified, and shall not apply to the Association.

10.2 Signs. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. “Signs” shall include any type of object (including, but not limited to, flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit, with the apparent purpose, in whole or in part, of making it visible to another Unit.

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

10.4 Temporary Structures. Except as provided in Sections 20.10 and 20.13 herein, 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 Management Committee.

- 10.5 Parking. Unless otherwise permitted by the Association in the Rules, and except for “customary parking” and “temporary parking,” as permitted by this Section 10.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project, except in the Unit’s garage, or as may be set forth more fully in the Rules. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the garage, driveway, or designated parking space for the respective Unit. “Temporary parking” shall mean parking on the private roadways within the Project of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, invitees, and guests including, without limitation: (a) the right to remove, or cause to be removed, any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles in any customary or temporary parking; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules, or Owners associated with people who violate such Rules. The Association may restrict or limit parking on public roadways by Owners, Occupants, and by people associated with the use of Units. Notwithstanding anything to the contrary herein, nothing in this Section 10.5 shall give the Association any general police powers over any public portions of the project, or any portion of the Project dedicated to the City.
- 10.6 Outside Speakers and Amplifiers. Except as permitted in the Rules, and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on, or directed to, the outside of any Unit shall be permitted.
- 10.7 Repairs. No repairs of any detached machinery, equipment, or fixtures, including, without limitation, motor vehicles, shall be made in the Project, except as may be permitted by the Rules.
- 10.8 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind, shall be regularly removed from Units, and shall not be allowed to accumulate therein or thereon. Refuse containers, and machinery and equipment not a part of the Units, shall be prohibited on the Unit, unless obscured from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed.
- 10.9 Residential Occupancy.
- (a) No trade or business may be conducted in, or from, any Residential Unit unless:
- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;

- (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (iii) the business activity does not involve solicitation of Occupants or Owners of the Project;
  - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers, or other individuals coming into the Project, who do not reside in the Project, as determined by the Management Committee, in its sole discretion.
  - (v) 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;
  - (vi) the business activity is disclosed to the Management Committee before business is commenced, and a description of the business activity provided, together with a statement of the amount of space required in the Unit for such activity and a description of any impact on the Project;
  - (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
  - (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
  - (ix) the Management Committee's ongoing requests for information related to the business, as necessary to determine compliance with this paragraph, are responded to fully and completely.
- (b) Except as allowed under Section 10.9(a) above, or as allowed under Article 20 herein, no Residential Unit may be used for any purpose other than a residential purpose.

10.10 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions. No Unit shall be split, subdivided, separated, or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit 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 Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project, unless the Management Committee, 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 10.10 shall be null, void, and of no legal effect.

10.11 Variances. The Management Committee, at its option, and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Article 10, if the

Management Committee determines, in its discretion (by majority vote): (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; (b) that the activity permitted under the variance will not have any financial affect, or any other substantial adverse effect, on the Owners or Occupants of the Project; and (c) is consistent with the Community-Wide Standards. Any such variance shall be unenforceable, and without any effect whatsoever, unless reduced to writing, and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with City ordinance. No variance may be granted that is inconsistent with the Act.

#### 10.12 Hazardous Substances.

- (a) Each Owner shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below) on or within the Project that are not properly controlled, safeguarded, and disposed of. No Owners shall do anything affecting the Project that is in violation of any Environmental Law. Notwithstanding the foregoing, the presence, use, or storage on the Project of small quantities of some Hazardous Substances, including, by way of illustration, gasoline, kerosene, or household-type solvents that are generally recognized to be appropriate for the maintenance of a Unit or the Project, shall not be deemed to be a violation of this Section 10.12.
- (b) 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. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.12 shall survive any subsequent sale of the Unit by an indemnifying Owner.
- (c) As used in this Section 10.12, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 10.12, "Environmental Law" means federal laws and state laws and county and

City ordinances and other laws or restrictions of the jurisdiction where the Project is located, that relate to health, safety, or environmental protection.

## ARTICLE 11 INSURANCE

- 11.1 Insurance Requirement of the Association. Pursuant to Section 402(3) of the Act, Part 4 of the Act does not apply to the Association. Accordingly, the Association shall obtain insurance as required in this Declaration. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers, and stand-alone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance specific to a Benefitted Common Area or a Service Area may be obtained by the Association, and the cost included in the Benefitted Common Area Expenses, or in the Service Area Expenses, as the case may be.
- 11.2 Annual Insurance Report. Prior to the annual meeting of the Association, the Management Committee shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the same insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage, and, if no earthquake insurance is obtained, a conspicuous, clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;” and (d) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous, clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available, and the best practices with respect to other similar projects. The most recent annual insurance report shall be made available to the Owners at or before the annual meeting of the Association, and shall be provided to any Owner, at any other time, upon request.
- 11.3 Insurance Requirements for Owners. Each Owner shall obtain property insurance for his/her Unit and its contents and the Building in which his/her Unit is contained, and shall provide the Association with a certificate of insurance upon request. At a minimum, the policy shall afford protection against loss or damage by: fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft and all other perils normally covered by “special form” property coverage. The 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. The cost of such insurance shall be an expense of the Owner. The provisions of this Section 11.3 shall not be construed to limit the power or authority of an Owner to obtain and maintain insurance coverage in addition to the insurance coverage required hereunder in such amounts and in such forms as the Owner may deem appropriate.

- 11.4 Property Insurance. The Association shall obtain property insurance insuring the Common Area and Facilities. The policy shall afford protection against loss or damage by: fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft and all other perils normally covered by “special form” property coverage. The 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. The cost of such insurance shall be part of the Common Expenses.
- 11.5 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance, insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner’s membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000), 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 Association or another Owner.
- 11.6 Director’s and Officer’s Insurance. The Association shall obtain Directors’ and Officers’ liability insurance protecting the Management Committee, the officers of the Association, and the Association, against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law, or similar state or federal statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager, and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager, or any employees of the Manager.
- 11.7 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year’s highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and

Management Committee members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the Association; and (iv) officers, directors, and employees of any Manager of the Association.

- 11.8 Workers' Compensation Insurance. The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association, to the extent that such insurance is required by law.
- 11.9 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Lender.
- 11.10 Named Insured. The named insured under any policy of insurance shall be the Association. Subject to Section 11.3, each Owner shall also be an insured under all property and CGL insurance policies.
- 11.11 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or 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, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action, as is necessary related to the Property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit, in excess of insurance proceeds and reserves, is a Common Expense, to the extent the Association is required, under this Declaration or the law, to provide insurance coverage for the Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents, and 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, and/or successors or assigns of an Owner. In the discretion of the Management Committee, or upon written request executed by Owners holding at least fifty percent (50%) of the total Allocated Interests, the Management Committee shall hire and appoint an insurance trustee ("Insurance Trustee") with whom the Association shall enter into an insurance trust agreement for the purpose of exercising such rights under this Section, as the Owners or Management Committee (as the case may be) shall require.
- 11.12 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association, and under direct

authorization of the Association, to terminate an insurance policy, an Owner's act or omission may not void an insurance policy, or be a condition to recovery under a policy.

## **ARTICLE 12** **EMINENT DOMAIN**

- 12.1 **Taking of Common Area.** If the Common Area and Facilities or any portion thereof, is taken by eminent domain, or sold under threat thereof, the Management Committee, as soon as practicable, shall cause the award to be utilized for the purpose of repairing or restoring that area of the Project adjacent to the taking, and any portion of the award not used for restoration shall be added to the general funds of the Master Association.
- 12.2 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the Management Committee shall wind down the Association in accordance with applicable law and award proceeds, after payment of Common Expenses, shall be allocated to the Owners, secured Lenders and lien holders, as their interests remain.
- 12.3 **Priority and Power of Attorney.** Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

## **ARTICLE 13** **AMENDMENTS**

- 13.1 **General Amendment Requirements.** Except as otherwise provided herein, and subject to Section 20.12, this Declaration may be amended only by an instrument, in writing, approved by Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest in the Association, at a meeting of the Owners held for that purpose, or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 13.2 **Scope of Amendments.** Subject to Article 20 herein, this Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association.
- 13.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided in Section 13.1 shall be executed by the president of the Association, and the secretary of the Association shall certify that the amendment has been approved and adopted, and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the Office of Recorder for Utah County, Utah.

- 13.4 Changes to Plat or Boundaries of the Association. The 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 Unit, or Units, 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 and Facilities, deleting, adding or modifying Benefitted Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) 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; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf, as necessary for the agreement, amendment, or correction.
- 13.5 Amendments to Benefitted Common Area. Subject to Article 20 herein, any Supplement to Declaration or other recorded instrument designating a Benefitted Common Area may be in the same manner as an amendment to the Declaration described in Section 13.1 above.
- 13.6 Amendment to Service Area. Subject to Article 20 herein, any group of Owners may petition the Management Committee to designate their Units or Lots as a Service Area for the purpose of receiving from the Association special benefits or services which are not provided to all Units or Lots. Upon receipt of a petition signed by a majority of the Owners of the Units within the proposed Service Area, the Management Committee shall examine and consider the terms upon which the requested benefits or services might be provided, and shall notify the Owners in the proposed Service Area of such terms and attendant expenses (which may include reasonable administrative charges). If such a petition is approved by the Management Committee, and by the Declarant during the Declarant Control Period, and by the Owners holding at least sixty-seven percent (67%) of the Allocated Interests within the proposed Service Area, the Association shall provide the requested benefits or services under the terms and conditions established by the Management Committee. The costs and administrative charges associated with such benefits or services shall be assessed as Service Area Assessments to the Units within such newly-formed Service Area.
- 13.7 Amendment to Conform to Law. The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing, such as through VA, FHA, FNMA, or similar programs, or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section,
- (b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded,
- (c) The Management Committee must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Declaration; (iii) the law that conflicts with the existing Declaration language, or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Association (1) notifies the Owner that it intends to amend the Declaration pursuant to this section, (2) provides the Owner a right to object to the amendment within thirty (30) days; and (3) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this Section 13.7, no more than thirty percent (30%) of the Allocated Interest holders have objected to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section 13.7, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge, and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the Office of Recorder for Utah County, Utah.

#### **ARTICLE 14**

#### **INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION**

- 14.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between any governing document of the Association and any governing document of the Master Association, the Master Association's governing documents shall control.
- 14.2 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by

the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

- 14.3 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one, or all, of such rights, options and remedies, or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 14.4 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.
- 14.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose as set forth in the Recitals. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for, or against, or strictly for or against, the Association, any Owner, or any other Person, subject to their terms.
- 14.6 Applicable Law. Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project, unless they are applicable as a matter of law, or unless the Association makes those amendments applicable by amendment to the Declaration.
- 14.7 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 14.8 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all, or any portion, of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 15 NOTICE

15.1 Notices. Any notice to be given to an Owner, a Lender, or the Association, under the provisions of the Governing Documents, shall be in writing, and shall be deemed effectively delivered if given by any of the methods specified for the particular type of notice.

- (a) Notice to an Owner from the Association. Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
- (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner, in writing, to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent;
  - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner, sent to a facsimile number provided by the Owner for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (v) by any other method that is fair and reasonable, as provided for in the Act, or otherwise provided for by law.
    - (1) Notwithstanding anything to the contrary in this Section 15.1, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail.
    - (2) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
    - (3) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the

Unit, and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given, or (b) ten (10) days after the posting.

- (vi) Special Notice Prior to Association Entry into a Unit.
  - (1) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
  - (2) In case of any emergency involving immediate and substantial damage to a Unit, the Common Areas and Facilities, Benefitted Common Area, or another Unit, before entering the Unit, the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit, the Association shall: (i) give notice to the Owner that an entry is required at least one (1) week in advance, with such notice stating: (a) that the Association or its authorized Persons will enter the Unit, (b) the date and time of the entry, (c) the purpose of entering the Unit, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit, or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, (f) any other information the Association deems appropriate to include; and (ii) post the written notice, described above, on the front door to the Unit at least three (3) days prior to entry into the Unit.
- (b) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender, in writing, to the Association, for the purpose of notice, or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (c) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:



- (i) by a written notice delivered personally to the Manager or President of the Association, which shall be effective upon delivery;
- (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
- (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or
- (iv) by facsimile (whether to a machine or by other means) to the Association sent to a facsimile number provided by the Association for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

**ARTICLE 16**  
**ATTORNEYS' FEES AND COSTS**

16.1 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition, or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term "costs," as used in this section, shall include all costs, including 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.
- (c) Exception to Owner's Liability for Fees and Costs. If, related to: (i) any dispute with an Owner; (ii) any challenge by an Owner to a position of the Association on a Term and Condition; or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without having incurred the

fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner, and the issues arise as part of the lawsuit.

## ARTICLE 17 RESERVES

- 17.1 Requirement for Reserves. Subject to Section 20.16, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:
- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments.
  - (b) **Amount.** In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Management Committee determines, based on the reserve analysis, to be prudent. For purposes of this Section 17.1, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
  - (c) **Owner Veto.** Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the total Allocated Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
  - (d) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
  - (e) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.
  - (f) **Reserve Analysis.** The Association shall cause a reserve analysis, with an onsite evaluation, to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the

total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (g) **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person, or Persons, with: (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) **Summary and Copies of Reserve Analysis.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

17.2 **Exceptions for Benefitted Common Area and Service Area Reserves.** The requirements set forth in Subsections 17.1 (b), (c), (e), (f) and (h) shall not apply to reserves, if any, for a Benefitted Common Area or Service Area. A reserve analysis prepared for any Benefitted Common Area or Service Area shall comply with Subsection 17.1(g), and a copy provided to the Owners of those Units assigned to the Benefitted Common Area or Service Area, as the case may be.

**ARTICLE 18**  
**LEASING AND NON-OWNER OCCUPANCY**

18.1 **Declaration and Rules Governing Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Unit shall be governed by this Article 18, the Rules, and procedures adopted as provided herein.

18.2 **Definitions.** For the purpose of this section the following definitions shall apply:

- (a) “Non-Owner Occupied Unit” means:
  - (i) for a Unit owned in whole or in part by a natural Person or Persons, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or

- (ii) for a Residential Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.
  - (b) “Family Member” means:
    - (i) the parent, sibling, or child of an Owner and that Owner’s spouse and/or children; or
    - (ii) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of: (1) a current Occupant of the Unit, or (2) the parent, child, or sibling of the current Occupant of the Unit.
- 18.3 No Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 18.4 and 18.5, any Unit may be leased or Non-Owner Occupied.
- 18.4 Permitted Rules. The Management Committee may adopt Rules requiring:
- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units other than those found in this Article 18, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like;
  - (b) other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.
- 18.5 Requirements for Leasing and Non-Owner Occupancy. Owners leasing their Units must comply with the following provisions:
- (a) Any lease or agreement for otherwise allowable non-owner occupancy must be in writing, must be for an initial term of at least six (6) months, and shall provide, as a term of the agreement, that the Occupant shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement, and binding on the Owner and the Occupant;
  - (b) If required in the Rules or requested by the Management Committee, a copy of any lease, or other agreement for non-owner occupancy, shall be delivered to the Association within the time period provided for in the Rules or required by the Management Committee;
  - (c) An Occupant may not occupy any Unit for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not);

- (d) Except as a guest of an Owner while the Owner is occupying the Unit, daily and weekly occupancy by an Occupant is prohibited (whether for pay or not); and
- (e) The Owner of the Unit shall be responsible for the Occupant's, or any guest's, compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, the Association shall have the right (but not the obligation) to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Association, the Management Committee, and the Manager shall not have any liability for any action taken pursuant to this Subsection 18.5(e), and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager, arising from any claim related to any action taken in good faith by any of them, pursuant to this Subsection.

18.6 Exceptions for Family Members. If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein:

- (a) Subsections 18.5(a), 18.5(c), and 18.5(d) above, shall not apply to that occupancy;
- (b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner; and
- (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Management Committee until an Occupant has violated a provision of the Governing Documents, and, if requested, may only be requested related to remedying or taking action as a result of such a violation.

**ARTICLE 19**  
**GENERAL PROVISIONS**

19.1 Enforcement. The 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.

19.2 Waiver of Security. The Association and each Owner (by taking title to a Unit) acknowledge and agree that any violation of this Declaration and/or the other Governing Documents by an Owner will irreparably harm the other Owners and the Association. Accordingly, each Owner, by taking title to a Unit, agrees that the Association shall not be required to provide security under Utah Rules of Civil Procedure 65A(c). Notwithstanding the foregoing, if, in any action by the Association for a temporary or permanent injunction against an Owner, the Association is required to provide security pursuant, the cost of such security may be assessed to the Owner.

19.3 No Liability of Officers and Directors. To the fullest extent permitted by applicable law, neither the Management Committee, nor any officer of the Association, shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on

account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

- 19.4 Use of Funds Collected by the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity, to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, and preserving the Common Area and Facilities, 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 Association managing, maintaining, and preserving the Common Area and Facilities, and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 19.5 Owner Liability and Indemnification. Each Owner shall be liable to the other Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act of that Owner, or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the 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.
- 19.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to affect the same. Such acceptance shall be deemed an appointment of the 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. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.
- 19.7 Security. Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within, or relating to, the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of any security measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the

Association has any duty to any Owner or Occupant related to security or criminal conduct, and further acknowledges that no duty is owed to anyone, such as that of a landlord or retail business. By purchasing a Unit and/or residing in the Project, Owners and Occupants agree that neither the Declarant nor the Association nor the Management Committee are insurers of the safety or well-being of Owners or Occupants, or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 19.8 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as may be required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 19.9 No Representations and Warranties. **EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES, THROUGH TAKING TITLE OR RESIDING IN THE PROJECT, THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE 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 PROJECT.**

## ARTICLE 20 DECLARANT RIGHTS

- 20.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all the rights and powers provided for in this Article 20. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article 20.
- 20.2 Right to Appoint the Management Committee During Declarant Control Period. The Declarant shall have the right to appoint and remove all Management Committee Members during the Declarant Control Period. In the appointment of Management Committee Members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may assume (and shall be presumed to have assumed, unless Declarant notifies the Association otherwise) the

powers of the Management Committee without appointing Management Committee Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.

- 20.3 Declarant Control Period. For purposes of this Article 20, and as used in this Declaration, the “Declarant Control Period” shall mean, and refer to, the period of time during which the Declarant owns any land within the Development. During the Declarant Control Period, the Declarant shall retain control, power, and authority over all decision-making ability or authority for the Association and/or the Project. The Declarant shall determine whether to hire professional management during the Declarant Control Period.
- 20.4 Easement Rights. The Declarant shall have, and hereby retains, an easement for access over, under, across, and through the entire Project, and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through, any easement right reserved to anyone in the Declaration.
- 20.5 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify the Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.
- 20.6 Assessment Exemption. The Declarant shall be exempt from any Assessments, including any Regular Assessment, Benefitted Common Area Assessment, Service Area Assessments or special Assessment.
- 20.7 Right to Amend Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral right to amend, revise, and modify this Declaration, any Supplement to the Declaration, the Bylaws, Articles of Incorporation, and the Rules, in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners. Pursuant to § 57-8a-217(6) of the Act, the Declarant’s promulgation or amendment of any Rules shall be exempted from the Act’s rule-making process. Any amendment to the Bylaws or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners.
- 20.8 Right to Designate Benefitted Common Area and Service Area and Modify Prior Designations. Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral authority to designate Benefitted Common Area and Service Area, and to designate the particular Units or Neighborhood assigned to such Benefitted Common Area or Service Area, as the case may be. During the Declarant Control Period, the Declarant shall have the unilateral authority to modify any previously designated Common Area or Service Area, and to adjust or modify the assignments of Units thereto.



- 20.9 Assignment of Special Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all, or some, of its control, power, authority, or decision-making ability to the Master Association, the Association, or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant, as provided for in this Declaration, may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.
- 20.10 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.
- 20.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 20, shall not be substantively or procedurally altered without the written consent of the Declarant until the Declarant 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 Article 20, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 20 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant, and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.
- 20.12 Use of Units and Common Areas and Facilities for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities, and any part of any Benefitted Common Area, in furtherance of any activities designed to accomplish or facilitate construction, improvement, and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit, with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs, or otherwise, any street or other parking as parking for sales only, or to otherwise restrict and use any common parking. The Declarant shall have the right, from time to time, to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.
- 20.13 Right to Use Common Area and Facilities for Special Events. The Declarant may use the Common Area and Facilities and Benefitted Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions: (a) the availability of the Common Area and Facilities; (b) payment of costs

and expenses incurred, and indemnification of the Association against any loss or damage resulting from the special event; (c) return of the Common Area and Facilities in the same condition as existed prior to the special event.

- 20.14 Exemption from Service Provider and Vendor Conflict Provision. The restrictions set forth in Section 5.12 of this Declaration shall not apply to service providers or vendors engaged by the Association during the Declarant Control Period.
- 20.15 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 20 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Unit, and the Association waive and disclaim any such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 20.16 Declarant Exemption from Statutory Obligations. Pursuant to § 57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act and Article 17 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period, and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

## **ARTICLE 21**

### **CONFLICT AND LITIGATION AVOIDANCE**

- 21.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or any aspect of the Project; all prior to taking title to a Unit. Having had the ability to inspect prior to taking title to a Unit and/or having paid market price for a Unit in the condition it and other Units and the Common Areas and Facilities are in at the time of purchase, it is acknowledged that it is unfair and improper thereafter to seek to have the Declarant and/or the Builder or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner, by taking title to a Unit, and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, the Owners and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association from subcontractors that the Association may enforce related to the development and construction of the Project. It is the intent of the parties hereto, as agreed to by the Owners by and upon taking title to a Unit, that these warranties (from

subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages of any kind arising from or related to construction or development of the Project. The intent of this Article 21 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, the Benefitted Common Area and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

- 21.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.
- 21.3 Owner Warranties. The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Units purchased. The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of, or take assignment of, any rights in any warranties from the Declarant to an Owner, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.
- 21.4 Waiver of Subrogation and Release. The Association and each Owner waives any right to subrogation against the Declarant and the Builder in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them, by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire, or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or Builder, or any of its respective principles, officers, managers, shareholders, members, employees, agents, and representatives. The Association and each Owner agree that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies, or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant and the Builder, and any of their respective

officers, employees, owners, or representatives, from any claims barred or released by this provision, including, but not limited to, any claim brought under any right of subrogation.

#### 21.5 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law, after the following efforts at dispute resolution have been completed: (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again, and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant or its subcontractors by the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall work, in good faith, to agree upon the arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration, and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) “Notice of Claim” shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged condition, if applicable; (v) samples of any alleged defective conditions or materials; (vi) all efforts taken to avoid, mitigate, or minimize the claim, or any alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty, and to the fullest extent permitted by the law, an Owner shall not, and

agrees not to, commence or maintain any litigation, arbitration, or other action against the Declarant or any of its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including, but not limited to, alleged construction defects, or any damages arising therefrom.

- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not, and cannot, commence or maintain any litigation, arbitration, or other action against the Declarant or its principles, officers, managers, shareholders, members, employees, agents, and representatives, for any reason, including, but not limited to, any alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Association shall indemnify and defend the Declarant and its principles, officers, managers, shareholders, members, employees, agents, and representatives, against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect, in or related to the Declarant's development and/or construction of the Project, and/or any damages arising therefrom. By taking title to a Unit, the Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that these warranties, if provided, and whatever coverage they might provide, are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim, and to indemnify the Declarant from any liability arising therefrom.
- (g) Subject only to the provisions in the Owner Warranties (if any) and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units and Common Areas and Facilities "AS IS," with all faults, and with no warranties of any kind, except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**
- (h) If otherwise allowed by law, notwithstanding the terms of this Declaration, or if allowed in this Declaration, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant or any contractor or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have a meeting of the Owners, with proper notice, and have all attorneys, experts, and other Persons expected to be involved in the claim, present at the meeting. Those Persons present, including the Management Committee, must permit discussion among the Owners and questions from the Owners, and must respond to all reasonable questions of the

Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:

- (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: “The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments, and will likely impact the resale value of your Unit, and your ability to sell your Unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue”;
  - (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation, including a breakdown of any costs and fees to be advanced by anyone, including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer, in which case the longer period shall be used for this estimate) and require a trial on the merits;
  - (iii) a detailed explanation of where any money to be paid by the Association will be obtained, including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;
  - (iv) a written statement of each Management Committee member indicating that member’s position on the litigation;
  - (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;
  - (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action, including a copy of any engagement letter, contract, or agreement related to that representation; and
  - (vii) a detailed description of the alleged claims against the Declarant, and of all efforts by the Association to resolve those claims prior to commencing any action.
- (i) In addition to the requirements above, and before commencing any action, the Association must obtain the approval of 85% of the total Allocated Interests (not 85% of those Owners present), by vote, at a lawfully called, and properly noticed, special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days, and not later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any

such action, including, but not limited to, copying costs, deposition costs, expert witness costs, and filing fees.

- (j) Any agreement with a law firm or attorney under which the law firm would represent the Association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (i) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action, as necessary to prosecute the action as quickly as the court system will allow; (ii) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum, (1) the work that was completed in the last month, (2) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month, broken down by time entry, person performing the work, and a description of each time entry, (3) the costs incurred by the attorneys and any experts in the prior month, (4) a running tally of all costs and time, by attorneys and staff members, since the beginning of the action, updated monthly, (5) a list of what is needed to move the action toward resolution, (6) the projected dates for each action that is needed to move the action toward resolution, and (7) an explanation of why any projected action cannot be completed immediately; (iii) the attorney or law firm will provide an opinion letter regarding the Association's claims prior to commencing any action that will, at a minimum, explain each claim, cite the law supporting the claim, cite the facts supporting the claim, provide an application of the law to the facts and analysis of each claim, cite any potential defenses or weaknesses to any claim, including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Association's likelihood of success on each claim, an analysis of potential damages, including citations to the law and facts supporting that analysis, and an opinion of the lawyer or law firm on the damages the Association would likely be awarded for each claim; and (iv) a requirement that the Association be permitted to terminate the engagement of the law firm or attorney at any time, with no requirement to pay any attorney fees incurred under a contingency arrangement up to that date if, in the Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any disruption to the operations of the Association, is not worth the continuation of the action, (c) the Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.
- (k) The existence of procedures and/or requirements in this Article 21 applicable to claims against the Declarant, or its contractor or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration

requirements) that is prohibited by this Declaration are provided solely in case any such claim is permitted by law, notwithstanding the terms of this Declaration.

- (l) Prior to engaging any lawyer or firm to represent the Association related to any litigation described in this section, the Association shall obtain independent counsel to review the engagement letter governing that representation, and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel, and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this declaration.

21.6 Applicability of Article 21 to the Builder. Except to the extent that the provisions in this Article 21 conflict with the provisions contained in an Owner's purchase agreement with the Builder, the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 21 shall also apply to the Builder.



Dated this 6 day of JANUARY, ~~2016~~. 2017

IVORY DEVELOPMENT, LLC

By: [Signature]  
**Signature**

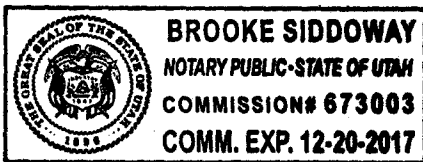
CHRISTOPHER P. GAMVROULAS  
**Printed**

Its: PRESIDENT

STATE OF UTAH )  
 ) ss.  
 COUNTY OF Salt Lake )

On this 9th, day of January, 2017, personally appeared before me  
Christopher P. Gamvroulas, whose identity is personally known to me, (proven  
 (Name of Document Signer)  
 on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is  
 the President, of Ivory Development LLC  
 (Title or Office) (Name of Entity)

and that said document was signed by him/her in behalf of said ~~Corporation~~ LLC with all  
 necessary authority, and acknowledged to me that said ~~Corporation~~ executed the same.



Brooke Siddoway  
 Notary Public

**EXHIBIT A**

## LEGAL DESCRIPTION

THE GARDENS AT IVORY RIDGE PLAT "A", Lots 101 through 122, inclusive as shown on the official plat thereof on file and of record in the Office of the Recorder for Utah County, Utah and recorded as Entry No.99797:2010, and all appurtenant Common Area and Facilities as shown thereon (as said Plat Map heretofore may have been amended or supplemented). 40-432-0101 through 0122.

All of THE GARDENS AT IVORY RIDGE PLAT "B", Lots 201 through 231, inclusive as shown on the official plat thereof on file and of record in the Office of Recorder for Utah County, Utah and recorded as Entry No. 39045:2012, and all appurtenant Common Area and Facilities as shown thereon (as said Plat Map heretofore may have been amended or supplemented). 40-448-0201 through 0231.

**EXHIBIT B**

**BYLAWS  
FOR  
THE GARDENS AT IVORY RIDGE ASSOCIATION**

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**AMENDED BYLAWS  
OF  
THE GARDENS AT IVORY RIDGE ASSOCIATION**

Initial bylaws for The Gardens at Ivory Ridge Association were established and adopted by the Declarant and included as Exhibit B to the Initial Declaration (the “Initial Bylaws”). Pursuant to the authority granted to the Declarant in Section 9.01 of the Initial Bylaws, the Declarant hereby establishes and adopts these amended bylaws (the “Bylaws”). These Bylaws replace and supersede the Initial Bylaws in all respects. These Bylaws, and any valid amendments thereto, shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I: DEFINITIONS**

- 1.1 Definitions. Except as otherwise provided herein, or as may be required by the context, all terms defined in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Gardens at Ivory Ridge (“the Declaration”) shall have the same defined meanings when used in these Bylaws.
- 1.2 Notice. Notice, as required in these Bylaws, shall be accomplished as provided for in the Declaration.

**ARTICLE II: OWNERS**

- 2.1 Annual Meetings.
  - (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
  - (b) Date and Time. The date, time, and location of the annual meeting shall be determined by the Management Committee, in its discretion.
  - (c) Purpose. The Annual Meeting shall be held for the following purposes:
    - (i) electing members of the Management Committee;
    - (ii) distributing of the budget, if it was not distributed before the meeting;
    - (iii) announcing the current deductible for the Association’s property insurance and the Owners’ potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
    - (iv) transacting such other business, as may properly come before the meeting.
  - (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Management Committee’s discretion, by the Management Committee at a subsequent meeting of the Management Committee.

- (e) Election of Management Committee Members. If the election of the Management Committee Members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

## 2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by the Management Committee, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Allocated Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose, or purposes, of the meeting, and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

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

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

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

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

2.7 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly



owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association, or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting. An Owner may appoint and transmit a proxy by any means consistent with the § 16-6a-712(2) of the Utah Revised Nonprofit Corporation Act, including, without limitation, by electronic mail.

- 2.8 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit, but one Owner shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 Ballots and Written Consent. The Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act.
- 2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting, in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request.

### **ARTICLE III: MANAGEMENT COMMITTEE**

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) **Number of Members.** The Management Committee shall be composed of three (3) persons meeting the qualifications stated in the Declaration, subject to the Declarant Rights set forth in the Declaration.
- (b) **Member Requirements.** At all times after the end of the Declarant Control Period and turnover of the Project from the Declarant, at least one (1) of the Management Committee Members must have, as his/her primary residence, a Unit in the

Project. All candidates for the Management Committee shall indicate, either in a written statement provided prior to the meeting or verbally at the meeting, whether his/her Unit in the Project is that person's primary residence. Any candidate whose election or appointment would contravene this requirement shall be ineligible for election or appointment. In determining which of the multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss. Candidates must also be current Assessments.

- (c) Term. Except during the Declarant Control Period, and except for the terms for the initial Management Committee Members elected after turnover of the Association from the Declarant to the Association Members described below, the term of each Management Committee Member shall be two (2) years.
- (d) In order to facilitate and promote continuity in the governance of the Association, and to provide and preserve institutional knowledge, the initial Management Committee Members elected after turnover of the Association by the Declarant shall decide among themselves that one of them shall serve only a one (1) year term, such that, thereafter, the terms of the Management Committee Members shall be staggered so as to avoid having all new Management Committee Members being elected at the same time.
- (e) Nominations. At or before the annual meeting, or any subsequent meeting at which the election is held, any Owner may submit his/her own name, or the name of any other willing and otherwise qualified person to serve on the Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee Members, unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (f) Disqualification. If any Management Committee Member is alleged to not meet the qualification requirements in the Declaration, and any Management Committee Member is notified of, or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee Member is qualified or not, and during this period shall not make any further decisions. If the Management Committee Member is not qualified, the Management Committee Member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association, or, if no notice was provided, to the date that the Management Committee established that the Management Committee Member was not qualified. If a Management Committee Member becomes unqualified, or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to

remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee Member are not subject to challenge on this basis up to the time that the Association is notified, in writing, as provided for in this Section.

- (g) **Removal for Failure to Participate.** If any Management Committee Member shall fail to appear at four (4) successive regular Management Committee meetings in a row, or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings, and after the Management Committee has attempted, in good faith, to schedule meetings consistent with all of the members' schedules, the other Management Committee Members may, by unanimous vote, remove that member and appoint a new member.

### 3.2 Meetings.

- (a) **Regular Meetings.** The Management Committee shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) **Who Is Entitled to Attend.** Consistent with § 57-8a-226 of the Act, Owners may attend meetings and may be present for all discussion, deliberation, and decisions, except when the Management Committee is in executive session.
- (c) **Special Meetings.** Special meetings of the Management Committee may be called by, or at the request of, any two Management Committee Members, or the President of the Association. Notice of any special meeting shall be given, at least 48 hours prior thereto, to each Management Committee Member. Except as provided in the Act for Owners who have requested notice, in writing, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (d) **Quorum and Manner of Acting.** A majority of the Management Committee Members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee Members shall be the act of the Management Committee. The Management Committee Members shall act only as a Management Committee, and individual Members shall have no powers as such.
- (e) **Place and Notice of Meetings.** The Management Committee may designate any place in Lehi, Utah as the place of meeting for any regular meeting called by the Management Committee, but shall, in good faith, attempt to hold meetings at the office of the Manager, or in as close a proximity to the Project as reasonably

possible. All Management Committee Members and Owners shall be given at least ten (10) days' notice of regular meetings.

- (f) Executive Session.
- (i) The Management Committee or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session, and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Management Committee who is not a member of a Sub-Committee shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Management Committee.
  - (ii) The minutes of the meeting at which an executive session is held shall include:
    - (1) The purpose(s) of the executive session in sufficient detail. By way of example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "To discuss the pending litigation with XYZ," or "to discuss a complaint of a Rule violation."
    - (2) Any decisions made during executive session. Decisions made in executive session, that cannot be properly and fully documented without disclosing attorney client privileged information, shall be recorded in the minutes of the meeting as "Decisions made regarding attorney client privileged issues that are recorded in separate and attorney client privileged minutes of the Executive Session," and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state, on their face, that they contain attorney client privileged information, and shall be disclosed to non-committee members only, as required by law, for the disclosure of attorney client privileged information.
  - (iii) The discussions in executive session shall be confidential, and shall not be disclosed to anyone outside of the meeting, except as authorized by the Management Committee or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law, or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
  - (iv) Executive sessions may be held to discuss and make decisions related to the following matters:

- (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including, but not limited to, meetings with the Association's counsel;
  - (2) Contracts and purchases related to the Association, including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by owners, including, but not limited to, the discussion of complaints, and whether to impose fines or utilize any particular remedy to address particular violations.
- (v) The Management Committee or the Sub Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

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

- (a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each and every Management Committee Member, in writing, either:
  - (i) votes for the action, or
  - (ii) votes for or against the action or abstains from voting, or does not respond; and does not exercise his or her right to demand, in writing, that action not be taken without a meeting.
- (b) Action taken under Section 3.3(a)(ii) is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Management Committee members then in office were present and voted.
- (c) A Management Committee Member may revoke approval for any action given pursuant to this section by communicating that the member has changed his or her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.

- (d) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (e) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee, and may be described as an action taken at a meeting of the Management Committee Members in any document.
- (f) For purposes of this section:
  - (i) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
  - (ii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (iii) Any response to any electronic communication shall be:
    - (1) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
    - (2) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  - (iv) A communication shall satisfy the requirement to “describe the action taken” if:
    - (1) it is in the form of an email, and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
    - (2) it is in the form of a facsimile and it includes, either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
    - (3) the writing from the Board Member sufficiently describes or restates the proposed action.

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

3.5 Resignation and Removal. A Management Committee Member may resign at any time by delivering a written resignation to either the President or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at

least fifty percent (50%) of the Allocated Interest of the Association, at a special meeting of the Owners duly called for such purpose.

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

#### **ARTICLE IV: OFFICERS**

- 4.1 Officers. The officers of the Association shall be a President, Secretary, and Treasurer.
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually, at the first meeting of the Management Committee following the annual meeting. Each such officer shall hold such office until a successor has been elected, or until such officer's death, resignation, disqualification, or removal, whichever first occurs. Except during the Declarant Control Period, no individual shall hold more than one office. All officers must be members of the Management Committee during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Management Committee may, from time to time, appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may, from time to time, determine. Subordinate officers need not be members of the Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. During the time that any office is vacant, and no other officer is available to perform the duties of that office, as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.
- 4.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting, including but not limited to: (a)

the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include, but not be limited to, any person who, (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting, such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager, or any other person, to preside over any meeting at which the President is present. The President shall sign, on behalf of the Association, all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President shall have the general authority to implement decisions of the Management Committee, and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee approval, as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant. Unless another representative of the Association is appointed by the Management Committee, the President shall serve as a director for the Master Association.

- 4.7 The Secretary. The Secretary shall keep the minutes of the Association, and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee that may require such person to keep. The Secretary shall also act in the place and stead of the President, in the event of the President's absence, inability, or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners, and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents, as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President, in the event of the President and Secretary's absence, inability, or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.
- 4.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer, to the extent such expenses are approved by the Management Committee.

#### **ARTICLE V: SUB-COMMITTEES**

- 5.1 Designation of Sub-Committees. The Management Committee may, from time to time, by resolution, designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one



- (1) Management Committee Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.
- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers, and may meet at such places and times, and upon such notice, as such Sub-Committee may, from time to time, determine. Each such Sub-Committee shall keep a record of its proceedings, and shall regularly report such proceedings to the Management Committee.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less 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 Sub-Committee. The members of any Sub-Committee, designated by the Management Committee hereunder, shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Management Committee.
- 5.4 Resignation and Removal. Any member of any Sub-Committee, designated hereunder by the Management Committee, may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may, at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Sub-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 Management Committee.

## **ARTICLE VI: INDEMNIFICATION**

- 6.1 Indemnification. No Management Committee Member, officer, or member of a Sub-Committee, shall be personally liable for any obligations of the Association, or for any duties or obligations arising out of any acts or conduct of said Management Committee Member, officer, or Sub-Committee member performed for, or on behalf of, the Association. The Association shall, and does hereby indemnify and hold harmless, each person who shall serve at any time as a Management Committee Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee Member, officer of the Association, or member

of a Sub-Committee, or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Management Committee Member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against, or be reimbursed for, or be defended against, any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein, or otherwise permitted.

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

#### **ARTICLE VII: AMENDMENTS**

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose, provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Declarant Control Period, as set forth in Section 20.7 of the Declaration.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adapted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the Office of Recorder for Utah County, Utah.

**ARTICLE VIII: WAIVER OF IRREGULARITIES**

- 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes, shall be deemed waived under the following circumstances:
- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting;
  - (b) if the objecting person was not in attendance at the meeting, but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held;
  - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting;
  - (d) if the objecting person was not in attendance at the meeting, and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting, or of any decision that was made at the meeting;
  - (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 Requirements for Objections. All objections, except those made at a meeting, shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.
- 8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration.
  - (b) Any failure to obtain the proper number of votes required to pass a particular measure.