

# THE FIELDS AT LAKEVIEW IV HOA

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**DECLARATION OF COVENANTS, CONDITIONS, and RESTRICTIONS FOR  
THE FIELDS AT LAKEVIEW IV HOMEOWNERS ASSOCIATION, INC.  
*AN EXPANDABLE DEVELOPMENT***

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**Utah County Recorder**  
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This Amended and Restated Declaration of Protective Covenants, Conditions, & Restrictions for The Fields at Lakeview IV Homeowners Association, an expandable project, is made as of the date of the recording in the Utah County Recorder's Office by Boardwalk Industries LLC, a Utah limited liability company, ("Declarant").

### RECITALS

1. Declarant is the owner of fee simple title to that certain real property situated in the city of Orem, Utah County, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").
2. Declarant will create within and upon the Property a neighborhood made up of multiple Lots and Residences known as The Fields at Lakeview IV. In order to do so, Declarant desires to establish protective covenants and conditions and restrictions upon the Property, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the environment within Fields at Lakeview Meadowgate.
3. The Association is not a cooperative as that term is used in Utah Code Ann. Title 57, Chapter 8a.
4. To provide efficient management for The Fields at Lakeview IV and to preserve its value, desirability and attractiveness, Declarant has incorporated a Utah nonprofit corporation called The Fields at Lakeview IV Homeowners Association, Inc. (the "Association") and Declarant delegates and assigns to such Association the powers of managing The Fields at Lakeview IV, of maintaining and administering the Common Areas and Facilities, of administering and enforcing all covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to, and of performing such other acts as shall generally benefit The Fields at Lakeview IV.
5. Declarant will hereafter hold and convey title to all of the property subject to the protective covenants, conditions and restrictions hereinafter set forth.
6. Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of Improvements; (2) use of any Dwelling owned by the Declarant as a model Dwelling, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant's rights under this Declaration in whole or part; and (5) retention of Declarant's rights with respect to subsequent phases of the Project. This Declaration shall be binding upon the Declarant, as well as its successors in interest, and may be enforced by the Declarant or the Association. A supplemental declaration, with such modifications or supplemental

provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Lots to be constructed after the initial phase.

**SUBMISSION**

1. The Property is made subject to, and shall be governed by the Utah Community Association Act (the “Act”).
2. The Property is made subject to, and shall be governed by this Declaration, and the covenants, conditions and restrictions set forth herein and to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Fields at Lakeview HOA, Inc. recorded concurrently herewith. The Property is also subject to the right of the City of Orem to access the roads within the Project for emergency vehicles, service vehicles, and for all of the utility installations up to the residential meters.
3. The Property is subject to described easements and rights of way including those depicted on the Plat. Easements and rights-of-way in favor of the City of Orem include any dedicated roadways and public utility easements and are depicted on the Plat, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel or real property.

**COVENANTS, CONDITIONS, AND RESTRICTIONS GENERALLY**

NOW THEREFORE, in consideration of the Recitals above, the Declarant, in order to further preserve and maintain the integrity of the Project, hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

**ARTICLE 1  
DEFINITIONS**

When used in this Declaration (including the “Recitals” and “Submission”), the following terms have the meaning indicated. Capitalized terms are defined in this Article. Terms that are applicable to a single section are defined in that section. This Declaration incorporates all terms defined in Utah Code Ann. § 57-8a-102.

1.1 “Articles” and “Bylaws” shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board’s selection, the Board’s general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.

1.2 “Assessments” shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in this Declaration or the Bylaws, regardless of whether said assessment is identified as a regular assessment, special assessment, capital improvement assessment, reconstruction assessment, fine, or other charge.

1.3 “Association” shall mean The Fields at Lakeview IV Homeowners Association, Inc., a Utah non-profit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.

1.4 “Association Rules” shall mean the rules adopted from time to time by the Association pursuant to ARTICLE 7 hereof.

1.5 “Building” shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

1.6 “Board” shall mean the Board of Directors of the Association.

1.7 “Board Member” shall mean a member of the Board of Directors.

1.8 “Capital Improvement” shall mean all new improvements with a life expectancy of five (5) years or more intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

1.9 “City” shall mean the City of Orem, Utah, a municipal corporation of the State of Utah.

1.10 “Common Areas” or “Common Areas and Facilities” shall mean and refer to:

(a) all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners and related improvements, including any additional areas contained in any Expansion Property which are subsequently annexed herein. Common Areas shall include, without limitation, the roads within the boundaries of the Project and the sewer lines within the boundaries of the Project but outside the boundaries of a Lot;

(b) all parts of the Project normally in common use or necessary or convenient to its use, existence maintenance, safety, or management, including all property rights, improvements, fixtures and personal property which are from time to time devoted primarily for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation all easements running in favor of the Association and the improvements, fixtures situated within or upon said easements, landscaping, irrigation systems and



associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street fixtures;

(c) all Common Areas and Facilities specifically set forth and designated as such on the Plat or Plats of the Property;

(d) all Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Plat or Plats of the Property.

(e) Notwithstanding the foregoing or anything to the contrary herein, the following shall not be deemed Common Area or Common Facilities: i) the sewer line on 1860 South is public and not part of the Common Area; ii) any area or thing duly designated as Common Area or Common Facilities of the Master Association in the Master Association's governing documents.

1.11 “Common Expenses” shall mean the actual and estimated costs of:

(a) maintenance, management, operation, repair, and replacement of the Common Areas and Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, etc., as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;

(b) unpaid Special, Reconstruction and Capital Improvement Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent such services are paid for by the Association;

(e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas and Facilities;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves as deemed appropriate by the Board;

(h) the costs of bonding the members of the Board, any professional managing agent: or any other person handling he funds of the Association;

(i) taxes paid by the Association

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas and Facilities or portions thereof;

(k) the costs of any other item or items approved by the Board and incurred in connection with the Common Areas and Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

1.12 “Declarant” shall mean Boardwalk Industries, LLC, a Utah limited liability company, and its successors and assigns.

1.13 “Design Guidelines” shall mean the guidelines adopted from time to time by Declarant at its sole discretion or, after the Turnover Date, by the Board at its sole discretion, setting forth certain architectural standards and specifications regarding the location and design of the improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Association Property. The Design Guidelines are incorporated in this Declaration by reference.

1.14 “Expansion Property” shall mean real property that may be added to the Project by the Declarant by recording additional Plats.

1.15 “Governing Documents” shall mean a written instrument by which the Association may (a) exercise powers; or (b) manage, maintain, or otherwise affect the Property. Governing Documents includes the Articles, the Bylaws, any Plat, this Declaration, and Association Rules.

1.16 “Improvements” shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property or any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.17 “Institutional Mortgagee” shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any insurance company, any federal or state agency, or any other institution specified by the Board.

1.18 “Limited Common Areas” shall mean and refer to those Common Areas and Facilities designated herein or on a Plat of the Property as reserved for the use of a certain Owner or Owners to the exclusion of the other Owners as further described in this Declaration. Limited Common Areas include driveways and walkways exclusively appurtenant to one residence.

1.19 “Lot” shall mean each or any individual lot as more particularly described in this Declaration, and any other lot or parcel shown on any Plat to the extent such lots or parcels are part of the Property. References in the Declaration to a specific Lot shall refer to the particular Lot as set forth in this Declaration and, as applicable, on the Plat for such Lot.

1.20 “Master Association” shall mean the Fields at Lakeview HOA, Inc. and its successors and assigns as more fully described and established by the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Fields at Lakeview HOA, Inc. recorded concurrently herewith.

1.21 “Meeting of the Board” or “Meeting” shall mean a gathering of the Board, whether in person or by electronic system that allows for oral communication in real time (such as web conferencing, video conferencing, and telephone conferencing), at which the Board can take binding action; Communication by email shall not be considered a Meeting.

1.22 “Member” shall mean every individual or entity who qualifies for membership in the Association pursuant to ARTICLE 2, including Declarant.

1.23 “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.24 “Mortgagee” shall mean the mortgagee or beneficiary under any Mortgage. A “First Mortgage” shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.25 “Occupant” shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.26 “Owner” shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, and the purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.27 “Party Wall” shall mean and refer to a wall that forms part of a Residence and is located on or adjacent to a boundary line between two adjoining Lots, which wall may be separated by a sound board between two adjoining Residences.

1.28 “Permittees” shall mean all Occupants and all other invitees of Occupants.

1.29 “Plat” shall mean any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots, Buildings, improvements, or Residences; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Lots, Buildings,

improvements, or Residences created by the Plat shall comprise the Project or a part thereof; and (d) which is filed for record in the office of the Utah County Recorder.

1.30 “Project” shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

1.31 “Property” shall mean the real property described on Exhibit “A” attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration.

1.32 “Residence” shall mean and refer to any Residence situated upon a Lot which has its own principal access to the outside, is not located over or under another Residence, and is designed and intended for separate, independent residential use and occupancy. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Residence or serving only that Residence shall be considered part of the Residence.

1.33 “Set Back” shall mean the distance from the property line of the Lot to the Building or improvement that is subject to the Set Back requirement provided in this Declaration, the Design Guidelines for the Project, and in any recorded final subdivision Plat affecting the Project or in the City’s applicable zoning ordinance.

1.34 “Single Family” shall mean one of the following groups of individuals, but not more than one at the same time: (1) an individual living alone; or (2) two or more people all of whom are related to one designated occupant of the dwelling by blood, marriage, adoption, or legal guardianship and their foster children and up to two other unrelated persons who do not pay rent and are not the primary occupant(s) of the dwelling; or (3) up to three related or unrelated individuals who live and cook together as a single housekeeping unit; or (4) two unrelated individuals and any children of either of them living as a single-housekeeping unit.

1.35 “Supplementary Declaration” shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions or similar instruments, if any, recorded subsequent to this Declaration, which annex portions of the Expansion Property and thereby extend the plan of this Declaration to such additional property as provided herein.

1.36 “Turnover Date” shall mean the earlier of: (i) the date upon which none of the Residences remain owned by and not sold by the Declarant; or (ii) the date the Declarant, at its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this Declaration, evidenced by an instrument recorded in the Office of the Utah County Recorder.

1.37 “Utah Community Association Act” or the “Act” shall refer to the applicable provisions of the Community Association Act described in Utah Code 57-8a-101 et seq., as amended from time to time.

## ARTICLE 2 MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall also be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with the Declaration. Membership in the Association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; provided, however, that a Member's voting rights and privileges in the Common Areas and Facilities may be regulated or suspended as provided in this Declaration, the Bylaws, or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association so that the name of the Member corresponds with the ownership of the Lot set forth in the Utah County Recorder's office.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, and Association Rules. The Association shall have two (2) classes of voting membership, Class "A" and Class "B," as follows:

a. Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" Membership shall be entitled to one (1) vote for each Lot such Member owns. When more than one person owns a portion of the interest in a Lot, each such person shall be a Member, but the vote for such Lot shall be exercised as they among themselves determine. Absent any other agreement among co-Owners of a single Lot, (i) a single co-Owner appearing at an Association meeting will be entitled to cast the one vote for the Lot, and (ii) if multiple co-Owners appear at an Association meeting, each Co-Owner will have a pro rata fractional vote based upon the ownership interests of the co-Owners appearing at such meeting. In no event shall more than one vote be cast with respect to any single Lot. The Association shall not be required to recognize the vote or written consent of any co-Owner that is not authorized to vote based upon a written designation of all such co-Owners delivered to the Association.

b. The Class "B" Member shall be the Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot owned by Declarant and one hundred (100) votes for each acre of property owned by Declarant within the Project but not yet depicted on a recorded Plat.

2.4 Approval of Members. Unless a different percentage is otherwise provided for in this Declaration, the Articles, or the Bylaws, the vote of a majority of the voting interest shall be

required to approve any matter before the Members. Votes may be taken at a meeting held pursuant to the requirements set forth in the Bylaws, or by an action by written consent. Quorum requirements for meetings of the Members shall be set forth in the Bylaws.

2.5 Declarant's Control of Association Prior to Turnover Date. Prior to the Turnover Date, the Declarant has the right to appoint all of the members of the Board and the officers of the Association. Notwithstanding anything to the contrary in this Declaration, Declarant may (but is not required to) exercise its discretionary termination of control in whole or in part as to any portion of the Project at its sole election and determination. In doing so as to a portion of the Project, it does not waive any reversionary or remaining control as to all other portions of the Project, the control of which is not expressly terminated by Declarant.

### **ARTICLE 3 COVENANT FOR ASSESSMENTS**

3.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due, and of each subsequent Owner other than a Mortgagee. Any subsequent Owner of a Lot shall be deemed to have notice of the Assessments, whether or not a lien has been recorded. No Owner may waive or otherwise escape liability for an Assessment by abandonment of the Lot. Notwithstanding the foregoing or anything to the contrary in this Declaration, an Assessment shall not be charged to the Declarant for Lots or Residences held by the Declarant that have not yet received a certificate of occupancy from the City.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Owners and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the upcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Owner. Written notice of the annual Regular Assessments shall be sent to every Owner; provided that failure to provide adequate notice does not relieve the Owner's obligation to pay the Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses

for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Owner, and the date or dates when due

3.4 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a described Capital Improvement upon the Common Areas and Facilities to the extent the same is not covered by the provision affecting Reconstruction Assessments herein, including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association. Notwithstanding the foregoing, after the Turnover Date, the Board shall not levy a Capital Improvement Assessment of \$5,000 or more nor undertake any Capital Improvement of the Common Areas and Facilities requiring a cost of \$5,000.00 or more without the affirmative vote of Members holding not less than fifty-one percent (51%) of the voting power of the Members.

3.5 Rate of Assessment. All Assessments shall be fixed by the Board at a rate computed and assessed with respect to each improved Lot in the ratio that such Lot bears the total number of all improved Lots. All Assessments may be collected at intervals selected by the Board. For purposes of this paragraph, "improved Lots" means Lots that have a Building located thereon and that have received a certificate of occupancy. Prior to the Turnover Date, the Declarant must approve the allocation of Assessments to unimproved Lots. After the Turnover Date, the total amount of Regular Assessments shall not exceed the previous year's Regular Assessments (determined for an entire 12-month period) by more than 15% without the affirmative vote of Members holding not less than sixty-seven (67%) of the voting power of the Members. Notwithstanding the foregoing and anything contrary therein, until a Lot has been owned by an Owner other than the Declarant for the first time, the Regular Assessment applicable to such Lot shall not exceed ten percent (10%) of the Regular Assessment which would otherwise apply to such Lot.

3.6 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates, such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.7 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: all properties dedicated to and accepted by, or otherwise acquired by a public authority; the Common Areas and Facilities; any Lots and Residences owned by the Declarant that have not received a certificate of occupancy from the City.

3.8 Special Assessments. In addition to the Regular Assessments authorized herein, the Association may levy a Special Assessment or Special Assessments from time to time. Special Assessments shall be payable in such manner and at such times as determined by the Board, and

may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Prior to the Turnover Date, the Board may levy a Special Assessment without prior approval of the Members. After the Turnover Date, a Special Assessment may not be levied without the affirmative vote of Members holding not less than fifty-one percent (51%) of the voting power of the Members.

3.9 Individual Assessments. The Association may levy an Individual Assessment against any owner individually and against such Owner's Lot to reimburse the Association for costs incurred in bringing an Owner and his or her Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, or any other charges incurred by the Association as the direct result of such Owner's acts or omissions, together with attorney's fees, interest and other charges related thereto which Individual Assessment may be levied by the Association after notice to the Owner and an opportunity for a hearing.

3.10 Board Discretion to Reduce or Abate. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its sole discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.11 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property (unless exempted by this Declaration) on the first day of the month following the conveyance of the first Lot within the Property by Declarant to an Owner other than Declarant. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.12 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

3.13 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas and Facilities. After the Turnover Date, all amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association.

3.14 Reinvestment Fee. Upon any transfer of legal title to a Lot, the parties to the transfer shall pay to the Association at closing, in addition to any other required amounts, a reinvestment fee, in an amount determined by the Board from time to time.

#### ARTICLE 4 NONPAYMENT OF ASSESSMENTS



4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within ten (10) days after the delinquency date, a late charge in an amount determined by the Board but not exceeding \$50 shall be levied and the Assessment shall earn interest from the delinquency date at the rate of eighteen percent (18%) per annum.

4.2 Enforcement Rights. The Association shall have the right to take any of the following actions against one or more Owners(s) after the delinquency date:

a. The Association may bring an action to recover a money judgment against the Owner for unpaid Assessments, interests, late fees, costs, and attorney's fees.

b. The Association may foreclose the Association's lien against the Lot for the unpaid Assessments, interest, late fees, costs, and attorney's fees pursuant to Utah Code 57-8a-304.

c. The Association may, after giving notice and an opportunity to be heard in accordance with Utah Code 57-8a-309(2), terminate an Owner's right to receive utility services for which the Owner pays for as a common expense and access to and use of Common Areas and Facilities.

d. Subject to Utah Code 57-8a-310, the Association may require tenants of a Lot to make future lease payments directly to the Association so long as Assessments remain unpaid for such Lot.

4.3 Other Remedies. The Association shall have all other rights and remedies available by applicable law, including the right to assess fines and suspend voting rights for any period during which any Assessment against an Owner's Lot remains unpaid.

All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

4.4 Intent. No provision of this Article shall be interpreted so as to limit in any way the rights of the Association for collection of Assessments.

4.5 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to B. Scott Welker, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the Lot for the purpose of securing payment of assessments under the terms of this Declaration.

## ARTICLE 5 COVENANTS, CONDITIONS, AND RESTRICTIONS

5.1 Permitted Use. All Lots shall be used only for Single Family residential purposes, and no more than one Residence shall be constructed on any Lot. No mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted.

5.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any statute, law or ordinance.

5.3 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City and/or County.

5.4 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Lot which service installations entirely within that Lot. No above-ground propane tanks may be installed on any Lot with the exception of average sized barbeque grills.

5.5 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling must be connected to the sanitary sewer system.

5.6 Emissions/Discharge, Etc. To maintain a degree of protection of the investment which Owners in the Project make, the following are prohibited within the Project:

a. Emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders, or other particles or substances into the atmosphere which may be detrimental to the health, safety, welfare, or comfort of any Owner or any other person outside of the Unit of orientation, to the condition of any other portion of the Property, or to any vegetation within the Property.

b. Discharge of harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person outside of the Unit of orientation or the condition of any portion of the Property.

c. Discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which may be detrimental to the health, safety, welfare, or comfort of any Owner or any other person outside of the Unit of orientation, to the condition of any other portion of the Property, or to any vegetation within the Property.

d. Recurrent or continuous emission of sound or noise from any Unit which may be heard without instruments outside of the Unit of orientation and which may adversely affect the welfare or comfort of any Owner or other person outside of the Unit of orientation.

e. Recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Unit of orientation.

f. Physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area.

g. Persisting unsightly condition (as determined by the Board in its sole discretion) on or in any Unit which is visible from any street or any other portion of the Property.

h. Unreasonable risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Units.

i. Violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

5.7 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Lot and the Property. Incineration of trash, garbage, or waste materials on the Property is prohibited; provided, however, that the Association is permitted to burn weeds.

5.8 Hazardous Materials.

a. Restriction on Hazardous Materials. Any Hazardous Materials brought upon, kept, used, generated, stored, treated, disposed of or released in or about any Lot, or soils or groundwater of the same, by any Owner of such Lot, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition." In the event any Hazardous Condition occurs on a Lot, the Owner of such Lot shall promptly take all actions at its sole expense as are reasonably necessary to correct said violation to the satisfaction of the regulating entity.

b. Indemnity. If an Owner of a Lot breaches the obligations stated in Section 5.4(a) above or if a Hazardous Condition exists at any time, the Owner of such Lot shall indemnify, defend and hold the Owners of each other Lot within the Property harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this ARTICLE 5 shall survive the termination of this Declaration.

5.9 Restrictions on Signs. Unless otherwise established by resolution of the Board in Association Rules or another written instrument, the following regulations regarding signs apply: No signs or advertising devices of any nature, including without limitation, commercial, political,

informational, or directional signs or devices, shall be erected or maintained on any Lot or other part of the Project, without the prior inspection and written approval of the Board, except as may be necessary temporarily to caution or warn of danger. If the Board consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Board. The Declarant shall be exempt from the provisions of this Section and shall be authorized to erect signs on Common Area or other property owned by the Declarant.

5.10 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Areas except for service animals of Owners or their guests or invitees with disabilities and except that dogs, cats or other household pets (maximum of two) may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the Dwelling of the Owner, or within confines on the premises of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Each Owner who keeps a pet on a Lot shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Association will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Association may revoke its permission to keep the pet in the Project and the pet shall be removed therefrom.

5.11 No Alterations. No Owner shall, without the prior written consent of the Association in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other Improvements thereon, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.

5.12 Exterior Antennas and Satellite Dishes. Prior, written approval from the Board as to the location of any new satellite dishes, antennas, cables and related hardware is required. The Board shall have authority to create and enforce Association Rules regulating the placement of satellite dishes, outdoor antennas, and other similar appliances for the purpose of addressing legitimate safety concerns in a manner that is no more burdensome to the Owner than necessary. No satellite dishes, outdoor antennas, or other similar appliances shall be larger than one meter in width or shall extend higher than twelve (12) feet above the Owner's roofline unless expressly permitted by resolution of the Board in Association Rules or in another written instrument. The Declarant shall be exempt from the provisions of this Section.

5.13 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board shall consent thereto in writing. The Declarant shall be exempt from the provisions of this Section.

5.14 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept on any Lot, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any

part thereof, nor shall anything be done or kept on any Lot that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept on any Lot or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by an Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensee, or invitees of such Owner.

5.15 Commercial Business. Commercial Business shall not be permitted within the Project. However, nothing in this article shall be construed to prevent (a) the Association from entering into contracts with utility providers which contracts would involve installing and maintaining equipment within the Project which may be used for providing services to parties that are not members of the Association; (b) the Declarant, or other builders, from using one or more Residences for purposes of a construction office or sales office until 100% of the Lots or Residences are sold in the Project; or (c) the use by any Owner of his or her Residence for a home occupation pursuant to City or County ordinance. Businesses, professions or trades may not require heavy equipment or create a nuisance within the Subdivision, and may not noticeably increase the traffic flow to the Project.

5.16 Leasing Restrictions.

a. D Notice of Lease. An Owner who qualifies to lease his or her Residence to a third party shall, in connection with any such lease, notify the Board of the existence of the lease, and present a copy of the lease to the Board for review, within seven (7) calendar days of the execution of the lease. The Board shall have the right to ensure the lease complies with the Governing Documents, and shall notify the Owner of any term or provision which does not comply.

b. Current Leases. All Owners who are leasing their Residence at the time that this amendment is recorded shall be permitted to continue to lease their Residence, except for those Owners who have leased or who are leasing their Residence in violation of the current restrictions.

c. Lease Requirements. Notwithstanding any of the foregoing, **Owners may not lease their Residence, rooms, or any portion of a Lot, to any tenant or tenants for a period of less than six (6) months** except that an Owner may lease an “internal accessory dwelling unit” as defined by Utah Code § 10-9a-530 for a period of thirty (30) consecutive days or longer if such internal accessory dwelling unit complies with all applicable land use ordinances, building codes, health codes, and fire codes. Any lease agreement between an Owner and a lessee must be in writing, and must provide that the terms of the lease shall in all respects be subject to the provisions of the Governing Documents and that the Association is an intended third-party beneficiary under the lease with authorization to evict the tenant for breaches of the Governing Documents. The lease or rental agreement shall be evidenced by a form approved by the Association. Any failure by the lessee to comply with the terms of the Association’s Governing Documents shall constitute a default under the lease and, upon notice to the Owner and a failure of the Owner to remedy violations of their lease, the Association shall have intended third-party beneficiary status and be entitled to initiate eviction proceedings against any such lessee.

d. Landlord Requirements. Owners who qualify to lease their Residence, including all Owners who currently lease their Residence, must comply with all applicable leasing ordinances, statutes and regulations, including but not limited to obtaining a business license with Orem City, as required by law, and attending a “Good Landlord” class in a timely manner. Owner/Landlords must provide a copy of their business license to the Board, together with proof of completion of the Good Landlord class. Owner/Landlords must obtain background checks for each prospective tenant.

e. Penalties. Any Owner who is subject to the lease restrictions set forth herein and who leases a Residence in violation of said lease restrictions or who advertises his or her Residence for short-term leasing in violation of said lease restrictions shall be subject to fines after notice has been sent to the Owner as required under the law. If such fines have not otherwise been established by the Board, the following shall apply: any continuing infraction(s) of the lease restrictions will incur a \$500 per month penalty against the Owner prorated for each day of the continuing infraction; any repeat infraction(s) of the lease restrictions will incur a \$500 fine for the first violation and an additional \$500 fine for each repeated violation.

f. Notice of Lease Restrictions In connection with the sale of any Residence, **the Board shall have the right, but not the obligation, to deliver to the title company closing the sale a notice to the buyer setting forth the lease rules and parameters required by this Declaration, and stating, in effect, that any attempted lease of the Residence contrary to the terms of this Declaration shall be subject to penalties.** The Board shall also have the right to record a Notice of Leasing Restrictions against each of the Residences in the Project.

g. If the Owner of the Residence at issue fails to comply with the lease restrictions, the Association may seek injunctive relief against the Owner in any court of competent jurisdiction. In the event such relief is granted to the Association, the Owner shall pay all of the Association’s attorney’s fees and costs.

5.17 Parking and Parking Garage Restrictions. The term “vehicle” shall include any and all types of automobiles, equipment, and recreations vehicles including, but not limited to: automobiles, cars, trucks, campers, motorcycles, scooters, atvs, trailers, boats, equipment, side by sides, or similar vehicles and equipment. No vehicles are to be parked or stored on the front or side streets, or lanes in the Project. No vehicles may be parked on driveways or elsewhere in the Project unless they are in running condition, properly licensed, regularly used and in compliance with City and/or County ordinances.

- a. All Guest parking areas shall be used solely for Guest parking.
- b. Garage doors shall remain closed except when the garage is in use.
- c. All abandoned vehicles left on the Project over five (5) days, whether or not parked in a designated parking area, and vehicles otherwise parked in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner’s sole expense.

Due to safety concerns, any vehicle that is too big to be parked in a garage or driveway (i.e. vehicles cannot extend or overhang onto the sidewalk) cannot be parked in the Project. Vehicles violating these restriction may be fined or towed at vehicle owners or Owner’s expense.

No resident shall repair or restore any vehicles of any kind in, on or about any Lot or the Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.

The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and (4) the assessment of fines to Owners and occupants who violate such Rules.

5.18 Rules and Regulations. Each Owner shall comply strictly with all Association Rules and other regulations adopted by the Association for the governance of the Lots, the Common Areas, and the Project, as such rules and regulation may be modified, amended, and construed by the Association.

5.19 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent reasonably necessary to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provision, covenants, conditions or restrictions upon completion of the construction.

5.20 Subdivision and Combination of Lots. After recording of the applicable Plat, a Lot may neither be subdivided nor combined with another Lot without the consent of the Declarant. After the Turnover Date, a Lot may neither be subdivided nor combined with another Lot without the consent of sixty-seven percent (67%) of all Owners. Each Owner waives the right of partition as may be permitted under applicable law.

5.21 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

5.22 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

5.23 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices or the painting or graffiti, within the Project is prohibited. The terms firearms, including

but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

5.24 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including, but not limited to tents and trailers without the prior written consent of the Board of Directors.

5.25 Energy Conservation Equipment. No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project without the prior written consent of the Board of Directors.

5.26 Long Term Storm Water Management Plan. The Association is subject to a Long-Term Storm Water Management Plan ("*Water Management Plan*"), dated \_\_\_\_\_, entered into between the Association and City for the management of storm water. The Association is responsible for implementing and abiding by the standard operating procedures within the Water Management Plan. Likewise, Owners should be familiar with the Water Management Plan and shall not engage in any conduct that is in violation of the Water Management Plan.

## ARTICLE 6 GENERAL CONSTRUCTION REQUIREMENTS

6.1 Construction of Improvements on Each Lot. All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement on a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Lot, or part thereof, to or from any of the Common Areas and Facilities, (b) construction work being performed on any other Lot; or (c) the use, enjoyment or occupancy of any other Lot. Any replacement, alteration or expansion of any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with engineering standards.

6.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

6.3 Licensed Contractor. Unless the Architectural Review Board gives a written waiver of approval to an Owner, no Improvement may be constructed, remodeled or altered on



any Lot except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

6.4 Approved Builder. Prior to the Turnover Date, only contractors approved in advance by Declarant, in its sole discretion, may construct Improvement(s) upon the Lots and Residences.

6.5 Dwelling to be Constructed First. No garage, out building or other Improvement may be constructed prior to the construction of Dwelling on the Lot.

6.6 Declarant Exemption. The Declarant is exempt from the provisions of this Article.

## **ARTICLE 7 DUTIES AND POWERS OF THE ASSOCIATION**

7.1 Organization of the Association. The Association has been or will be organized as a nonprofit corporation pursuant to the Utah Nonprofit Corporation Act. If, at any time, such nonprofit corporation is dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. To the greatest extent possible, the successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association. Notwithstanding the foregoing, upon dissolution of the nonprofit corporation, the Board, in its sole discretion, may re-incorporate the Association by renewing the dissolved nonprofit corporation or by incorporating a new nonprofit corporation with a name that is substantially similar to the previously dissolved nonprofit corporation and with Articles that adopt the Declaration and Bylaws and that are otherwise substantially similar to the Articles of the previously dissolved nonprofit corporation. In the event that the Board incorporates a new nonprofit corporation as described above, the new nonprofit corporation shall be a successor of the previously dissolved nonprofit corporation and all of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the new nonprofit corporation.

7.2 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Board shall:

a. enforce the provisions of the Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation for the Association Rules as provided in the Bylaws and Section 7.3 below, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;

- b. acquire, maintain and otherwise manage all of the Common Areas, Common Facilities, and all improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;
- c. pay any real and personal property taxes and other charges assessed against the Common Areas and Facilities unless the same are separately assessed to the Owners;
- d. obtain, for the benefit of the Common Areas and Facilities, all water, gas and electric, refuse collections and other services;
- e. grant easements where necessary for utilities and sewer facilities over the Common Areas and Facilities to serve the Property as provided herein;
- f. contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;
- g. delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of condominium developments or planned unit developments to perform all or any part of the duties and responsibilities of the Association;
- h. establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- i. have the power of entry upon any Lot where necessary in connection with construction, maintenance or repair for the benefit of the Common Areas and Facilities, or the Owners;
- j. at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Lots;
- k. acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Areas and Facilities, the administration of the affairs of the Association or for the benefit of the Members;
- l. at its sole discretion, contract for communication services (e.g., cable television, Internet, telephone, etc.) for the benefit of the Owners who have subscribed for the service; and
- m. have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the

payment of monetary consideration, all or any portion of the Common Areas and Facilities to said district.

7.3 Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas and Facilities; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency. Prior to the Turnover Date, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

7.4 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation, whether to a professional management company, committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

7.5 Schedule of Fines and Penalties. The Association has the authority, from time to time, to set forth in the Association Rules a schedule of fines and penalties for violations of the Association's governing documents.

7.6 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his or her account, the Association may charge a fee, as allowed by the Act. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of his or her Lot, the Association may charge a fee as allowed by the Act.

## **ARTICLE 8 INDEMNIFICATION**

8.1. Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he is or was a Board Member or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Association, and, with respect to any criminal

action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by an order or settlement, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Association or with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

8.2. Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a Board Member, officer, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VIII.

8.3. Settlement by the Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Board of Directors, 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 9 REPAIR AND MAINTENANCE

9.1 Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Areas and Facilities or other land within and about the Project in such a manner and at such times as the Board shall prescribe and shall have a right of entry sufficient to allow accomplishment of the same:

a. maintain, repair, and replace the Common Areas and Facilities in a clean, safe, and attractive condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain;

b. maintain, repair, and replace any Association-owned roadways, the common walkways, the driveways, and the parking areas (other than parking garages appurtenant to a Residence), including snow removal of the sidewalks and driveways;

c. maintain in a clean, safe, and attractive condition all landscaping whether or not on an Owner's Lot but excluding any landscaping within a Lot's Limited-Common-Area backyard or back patio (if any);

d. maintain, repair and replace any perimeter fencing around the Project. The Association shall maintain, repair and replace any originally installed privacy fences separating the Units. However, if an Owner, after receiving the required written permission from the Association, installs additional 6-foot-tall white vinyl privacy fencing to enclose the patio area, such Owner or future owner shall be responsible for maintenance, repair and replacement of any

fencing enclosing the patio area, including any originally installed privacy fences separating the Units;

e. maintain all drainage facilities and easements which constitute Common Areas and Facilities in accordance with the requirements of any applicable flood control district;

f. work with the appropriate public utility to maintain any utility easements located within the Common Areas and Facilities;

g. maintain the public rights-of-way within the Project; and maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature;

h. notwithstanding the foregoing or anything to the contrary herein, the Association shall have no obligation to maintain, repair, or replace any area or thing that the Master Association is obligated to maintain, repair, or replace pursuant to its governing documents.

i. The Association shall have no obligation to maintain or repair public streets.

j. The Association shall have the authority but not the obligation to repair and replace roofs, gutters, downspouts, and exterior building surfaces of any Residence if, in the sole discretion of the Board, deemed reasonably necessary in order to maintain uniformity, provide the most convenient means for undertaking a project that affects multiple Residences, or settle a dispute among Owners regarding the division of responsibility. The Association shall give thirty (30) days' written notice to the Owners of the Residences that are to undergo such repairs or replacements prior to commencement of the same. If the Association pays for the repairs or replacements, such amount shall be assessed equally to the Owners of the Residences that directly benefited from the repairs or replacements. Notwithstanding the foregoing, if a repair or replacement described herein was reasonably necessary because of the willful or negligence conduct of an Owner or his or her occupant, such Owner shall be solely responsible for the expenses thereof.

9.2 Maintenance by Owner. Every Owner shall:

a. subject to Section 9.3, repair, replace, maintain, paint, and re-finish all portions of such Owner's Lot, Residence, and Improvements thereto including, without limitation, any exteriors, roofs, plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, and appliances in and connected to the Residence in a clean, safe, and attractive condition at all times, and in compliance with this Declaration, the Articles, Bylaws and the Association Rules;

b. keep such Owner's Lot and Limited Common Areas free from trash and debris, and keep all lighting clean and functional;

c. notwithstanding the foregoing and anything contrary therein, no Owner shall be responsible for the maintenance of landscaping on such Owner's Lot except for any landscaping in a Limited-Common-Area back yard or back patio (if any).

9.3 Association Approval Required for Certain Modifications and Alterations. Notwithstanding anything to the contrary herein, an owner shall not do any of the following without prior written consent from the Board:

- a. undertake any structural modification, structural alterations, or structural installations to the outside of his or her Residence;
- b. replace his or her roof or exterior building surfaces or any part thereof;
- c. cause any outbuildings to be placed or erected on the Common Areas and Facilities;

The consent required by this Section shall be in addition to any consent an Owner is required to obtain pursuant to any other section herein. Without limitation, the Board may deny a request for written consent hereunder so that the Association may repair or replace roofs, gutters, downspouts, or exterior building surfaces at issue and assess the appropriate party for the associated expenses as provided in this Declaration.

9.4 Architectural Review Committee and Design Guidelines.

a. The Board shall serve as the Architectural Review Committee (the “ARC”) unless it delegates the responsibilities of the ARC, which it shall have the authority to do. The ARC shall prepare or adopt and promulgate on behalf of the Association, design and development guidelines, and application and review procedures, applicable to the Association Properties or any portion thereof (the “Design Guidelines”). The guidelines and procedures shall be those of the Association, and the ARC shall have the sole and full authority to prepare and to amend the same, subject to approval of the City (if applicable). The Association shall make copies of the guidelines and procedures available, upon request, to Owners, builders and developers who seek to engage in development of or construction upon any portion of the Association Properties, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

b. Any construction, alteration, modification, removal or destruction, within the Project, including the location of all improvements, must be approved in writing by the ARC prior to the commencement of the same. No person commencing such construction, alteration, modification, removal or destruction prior to receipt of such written approval shall acquire any vested rights in any such improvement. A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

c. The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or Residence or incompatible with the Design Guidelines. Considerations such as siding, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots, Residences, or Common Area, and any other factors which the ARC reasonably believes to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

d. Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

e. Any Owner adversely impacted by action of the ARC may appeal such action to the Board. If, however, the ARC's duties are being carried out by the Board, then no such right to appeal shall exist.

f. All appeals and hearings shall be conducted in accordance with procedures set forth by the Board by resolution.

g. The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

h. The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date. The ARC shall have authority to record a document giving notice of the noncompliance with recorder's office in the county where the Lot is located. Any Owner who receives a notice of noncompliance may appeal the notice in accordance with the appeals procedure set forth by the Board.

i. Neither the Board nor the ARC shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

j. Notwithstanding anything to the contrary herein, prior to the Turnover Date, Declarant need not submit or receive any approval from the ARC.

#### 9.5 Standards for Maintenance and Construction.

a. Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines.

b. Throughout any period of construction upon a Lot, the Owner of such Lot shall keep the Lot and all streets used by construction equipment or trucks in clean and safe condition,

shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

c. The Declarant shall be exempt from the provisions of this Section.

9.6 Right of Association to Maintain and Install. In the event that the need for any exterior maintenance or repair of a Residence or the Improvements thereto is caused through the willful or negligent acts of the Owner or the Owner's Occupants or Permittees, the cost of such exterior maintenance or repair shall be assessed against the Owner and his or her Lot as hereinafter set forth.

a. Upon finding by the Board that the need for exterior maintenance or repair was caused by the willful negligent acts of the Owner or the Owner's Occupants or Permittees, the Board shall give notice of its finding to the responsible Owner which shall briefly describe the maintenance or repair needed and the willful or negligent acts and set a date for hearing before the Board or a committee selected by the Board for such purpose.

b. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

c. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of a committee may be appealed to the Board, but a decision of the Board shall be final.

d. If, after a hearing as described herein, the Board reaches a decision that the need for exterior maintenance or repair was caused by the willful or negligent acts of the Owner, its Occupants or Permittees, the Owner does not sufficiently correct the deficiency on or before the date set by the Board, and the Association then pays for such maintenance or repair, such amount shall be a Special Assessment to the affected Owner and Lot.

e. The Declarant shall be exempt from the provisions of this Section.

9.7 Competing Provisions. The provisions of this Article shall be interpreted to clarify and expand upon any maintenance provisions contained in an applicable Plat or any other Association governing documents. If any provisions of a Plat conflict with any provisions in this Article, the provisions of this Article shall prevail.

## **ARTICLE 10 INSURANCE**



10.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law subject to reasonable availability. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

- (1) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
- (2) "Residence Damage" means damage to any Residence or a combination of Residences.
- (3) "Residence Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to each Residence damaged.

10.2 Property Insurance.

a. Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas and, to the extent the Project contains Residences or structures that share Party Walls, blanket insurance on all attached Residences (including fixtures and building service equipment) is required.

- (i) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (ii) Any blanket policy shall be in an amount not less than one-hundred percent (100%) of current replacement cost of all property covered by such policy (including the Residences if applicable) 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.
- (iii) A blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one-hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- (iv) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available (ii) "Equipment Breakdown," if the

Subdivision has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of one million dollars (\$1,000,000) or the insurable value of the building containing the equipment.

- (v) The maximum deductible the Association will carry on its blanket policy of property insurance is ten thousand dollars (\$10,000).

b. Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

- (i) The Association's policy provides primary insurance coverage;
- (ii) The Owner is responsible for the Association's policy deductible;
- (iii) The Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible;
- (iv) An Owner who owns a Residence and has suffered Residence Damage as part of Covered Loss is responsible for an amount calculated by applying the Residence Damage Percentage for that Residence to the amount of the deductible under the Association's property insurance policy; and
- (v) If an Owner does not pay the amount required under this Article within 30 days after substantial completion of the repairs to, as applicable, the Residence or the appurtenant to the Residence, the Association may levy an assessment against the Owner for that amount.

c. Flood Insurance. If any part of the property insured by the Association comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained. If the property insured by the Association is not situated in a Special Flood Hazard Area, The Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover floods not otherwise covered by blanket property insurance.

d. Earthquake Insurance. The Association may, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

e. Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

f. Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible.

10.3 Comprehensive General Liability (CGL). The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area, or membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one person 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.

10.4 Workers Compensation Insurance. In the event that the Association hires any employees, it shall, at that time, obtain worker's compensation insurance in compliance with Utah state law with employers liability limits of \$1,000,000.

10.5 Directors and Officers Insurance. The Association shall obtain Directors and Officers liability insurance with a minimum limit of \$1,000,000 protecting the current and prior Board of Directors, the current and prior Officers, 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). The 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 act or similar statute or that are based on any form of discrimination or civil rights claims;
- d. provide coverage for defamation; and
- e. provide coverage enhancements including: 'Definition of insureds' which will include the association or corporation, past and present directors, trustees, officers, volunteers, committee members employees and property manager.

In the Board's sole discretion, the Directors and Officers Insurance policy may provide coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any similar policy maintained by the manager or its employees.

10.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain a fidelity bond and 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 assessment 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, Board of Directors, or 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

10.7 Business Auto Insurance. In the event that the Association acquires any vehicle in the Association's name, it shall, at that time, obtain business auto insurance with minimum limits of \$1,000,000 combined single limits for liability plus applicable no fault coverage and uninsured/underinsured limits of \$1,000,000. In the sole discretion of the Board, the Association may also obtain physical damage insurance.

10.8 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.

10.9 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

10.10 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 the Association, and shall not be payable to a holder of a security interest. 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 Residences. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and 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 representative, successors or assigns of an Owner.

10.11 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, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

10.12 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

10.13 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY AND/OR EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT.**

## **ARTICLE 11 DESTRUCTION OF IMPROVEMENTS**

In the event of partial or total destruction of Improvements upon the Common Areas and Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Reconstruction Assessment may be levied by the Association to provide the necessary funds or such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Board shall distribute pro rata such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of his or her Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association.

## **ARTICLE 12 EMINENT DOMAIN**

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas and Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Areas and Facilities, the rules as to restoration and replacement of the Common Areas and Facilities and the improvements thereon shall apply as in the case of destruction of the improvements upon the Common Areas and Facilities. In the event of a total taking, the Board shall distribute pro rata any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

## **ARTICLE 13 RIGHTS TO THE COMMON AREAS AND FACILITIES**

13.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Areas and Facilities and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

a. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas and Facilities.

b. The right of the Association subject to the approval rights of Mortgagees pursuant to ARTICLE 15 hereof, to dedicate or transfer all or any part of the Common Areas and Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas and Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-seven percent (67%) of the voting power of the Members.

c. The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsections 13.1(b) above, all or any portion of the Common Areas and Facilities to said district.

13.2 Waiver of Use. No member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Lot owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas and Facilities or the abandonment of his or her Lot.

13.3 Conveyance. The Common Areas and Facilities designated in each final subdivision Plat recorded by Declarant with regard to the Property shall be deemed conveyed by Declarant to the Association concurrently with the recording thereof.

## **ARTICLE 14 EASEMENTS AND LICENSES**

14.1 Owners' Rights and Duties: Utilities and Communication Lines. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

a. Wherever sanitary sewer, water, electricity, gas, telephone and communication lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement for the full extent necessary therefore, to enter upon the Lots owned by others, in or upon said lines of facilities, or any portion thereof, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below,

provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

b. Wherever sanitary sewer, water, electricity, gas, telephone or communication lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner of each Lot served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot.

c. The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

14.2 Reservation of Access and Utilities. Easements over the Property for the installations and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns. Declarant hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

14.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner and the Occupants and Permittees of each Owner:

a. Nonexclusive easements over, upon, across and between each Lot for the purpose of pedestrian traffic between each Lot and (1) each other Lot which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Areas and Facilities; (4) the parking areas now and hereafter located on each Lot; (5) over and across the Common Areas located on each Lot; limited, however, to those portions of each Lot which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

b. Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Lot and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) the Common Areas and Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular access ways as such portions may be relocated from time to time by such Owner.

c. Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on each Lot for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now and hereafter abutting any portion of the Property; and (3) the Common Areas and Facilities.

d. Nonexclusive easements in and to the parking areas from time to time located on each Lot for access to and use for vehicular parking purposes.

14.4 Maintenance of Exteriors. A nonexclusive easement and right of way on, over, across, through, above, and under each Lot, Residence and Building for the maintenance, repair, and replacement of the exteriors of each Residence and Building and any landscaping located on any Owner's Lot as provided herein is reserved and granted to the Association.

14.5 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or Residence or if any structure constructed by Declarant on any Residence now or hereafter encroaches upon any other Lot or Residence or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot or Residence shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or Residence or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

14.6 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Residences, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Residences, or other property in the Project or within any undeveloped land, (c) improvement of the Common Area and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

14.7 Income Generated from Service Providers. Declarant, as owner of the real property at the time it is annexed into the Project through recordation of a plat, which includes the dedication of certain utility easements to the City, County or Association, may negotiate terms with service providers that desire to install infrastructure to provide services to Owners in the



Project. Prior to the Turnover Date, any income gained from these Bulk Service Agreement with Bulk Providers by Declarant may be retained by the Declarant. For purposes of this Section, a “Bulk Provider” shall mean a private, public, or quasi-public utility or other company which provides, or proposes to provide, cable television, satellite television, high speed internet, security monitoring, or other electronic entertainment, information, communication, or security services, or concierge or other personal services to the Owners, Occupants, or Residences within the Project pursuant to a Bulk Service Agreement; a “Bulk Service Agreement” shall mean an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, satellite television, high speed internet, security monitoring, or other electronic entertainment, information, communication, or security services, or concierge or other personal services, to Owners, Occupants, or Residences within the Project.

## **ARTICLE 15 NATURE OF EASEMENTS, LICENSES, AND RIGHTS GRANTED**

15.1 Easements Appurtenant. Each and all of the easements, licenses, and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements, licenses, and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominant estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

15.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- f. are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- g. create mutual equitable servitudes upon each Lot in favor of the other Lots;
- h. constitute covenants running with the land; and
- i. shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision is to be performed on such portion.

## **ARTICLE 16 RIGHTS OF LENDERS**

16.1 Filing Notice; Notices and Approvals. A mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a mortgage encumbering a Lot within the Property. Such notice shall state whether such mortgagee is a First Mortgagee. If the approval of any percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of the percentage of only those mortgagees which have delivered such notice

to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such a notice or request remain unchanged.

16.2 Priority of Mortgage Lien. No breach of the covenants, conditions, or restrictions herein contained nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

16.3 Relationship with Assessments Liens.

a. The lien provided for in ARTICLE 3 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

b. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage, the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage, or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

c. Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Property.

d. Nothing in this Section shall be construed to release any Owner from his or her obligation to pay for any Assessment levied pursuant to this Declaration.

**ARTICLE 17**  
**PARTY WALLS**

17.1 Boundary Line between Residences. The boundary line between two (2)

Residences shall be deemed to be the center line of the airspace between the exterior walls of the two (2) Residences which abut such airspace (the “Party Walls”) or, if there is no airspace, where the Party Walls abut, notwithstanding the fact that the common boundary line for the Residences may not be located precisely upon said center line of the Party Walls. The Owner of each Residence from time to time shall have the full rights of ownership, use and occupancy of such Residence and the Owner of a Residence shall not have any right, title or interest in any part of the other Residences located primarily adjacent to such unit.

17.2 Limitation on Alterations to Party Walls. No Owner of a Residence shall have the right, except with the prior written consent of the adjacent Owner, to (i) make any alteration or additions to any Party Wall or any part thereof, except non-structural, interior alterations made within the Residence of such Owner’s unit, or (ii) take any action which would adversely affect the structural integrity or sound transmission prevention qualities of the Party Walls.

17.3 Exterior of Party Walls – Colors and Materials. The exterior portions of any Party Wall visible outside a Residence shall be of the same color and/or materials as the exterior walls thereof.

17.4 State Law Governs. If inconsistent with the provisions of this Article, the laws of the State of Utah regarding party walls shall prevail.

## **ARTICLE 18 EXPANSION RIGHTS AND SUBMISSION**

18.1 Right to Expand. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project all or a portion of the Expansion Property. The Buildings on the Expansion Property are required to be substantially similar to those constructed upon the Property.

18.2 Annexation without Approval and Pursuant to General Plan. All or any part of the Expansion Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, consent or vote of the Association or its Members or any other persons or parties, provided that a Supplementary Declaration covering the portion of said Expansion Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, consent or vote of the Association or its Members or any other persons or parties, provided that a Supplementary Declaration covering the portion of said Expansion Property sought to be annexed, shall be executed by the then Owner or Owners thereof, consented to by Declarant, and recorded; provided, however, no Supplementary Declaration shall be so executed and recorded pursuant to this Section subsequent to the Turnover Date. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Property and all of the Owners of Units in said annexed real property shall automatically be Members of the Association.

18.3 Supplementary Declaration. The annexations authorized under section 18.2 may be made by recording a Supplementary Declaration of Protective Covenants, Conditions and Restrictions, or similar instrument, with respect to the Expansion Property which shall extend the plan of this Declaration to such property. Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property unless such Supplementary Declaration is approved in the manner required herein for an amendment to this Declaration.

18.4 No Obligation to Expand. This Declaration is not intended, and shall not be construed so as, to impose upon Declarant an obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to the Project of any of the Expansion Property.

18.5 Owners' Obligations Concerning Expansion of Project. Each Owner, by acquiring his or her interest in the Project, agrees not to inhibit or oppose Declarant's future development of the Expansion Property (whether or not added to the Project) and the obtaining of necessary approvals therefore. Without limiting the scope of the immediately foregoing sentence, no Owner, directly or indirectly, shall oppose such development in public meetings, by petition, or by legal actions.

## **ARTICLE 19 AMENDMENTS**

19.1 Manner of Amending. This Declaration may be amended as follows:

b. At all times on or prior to the Turnover Date, this Declaration may only be amended, altered or modified by a Supplementary Declaration or by another amending document approved and signed by the Declarant. No other Members will be required to approve such amendment

c. After the Turnover Date, this Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of voting Members representing sixty-seven percent (67%) of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

19.2 Consent to Amend. If an Owner consents to the Amendment of this Declaration or the Association bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

19.3 Mortgagee's Rights. No amendment may impair the validity or priority of the lien

of any Mortgage held by any Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

19.4 Acceptance of Deed. By acceptance of a deed of conveyance to a Lot or Residence each Owner thereby gives its full, irrevocable and unqualified consent on behalf of itself, its mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article.

19.5 Certain Amendments Requiring Consent. No amendment of this Declaration changing the allocation of assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

## ARTICLE 20 ASSOCIATION LITIGATION

20.1 Certain Litigation Requiring Consent. In recognition of the expenses and disruption associated with litigation, except as otherwise provided by this Article, the Association shall not commence a judicial or administrative proceeding without the approval of the Declarant for so long as the Members govern the Association and thereafter only upon the approval of Owners representing at least 75% of the total vote of the Association.

20.2 Actions Arising Out Of an Alleged Defect. Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Article shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

20.3 Compensation of Legal Counsel. No action affected by this Article shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys' fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

20.4 Application and Amendment of this Article. This Article shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its

manager for services or supplies. This Article shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

20.5 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or its assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant's members, for the purpose of constructing Residences on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Residence or Lot, Declarant shall have the option, but not the obligation, to purchase such Residence or Lot on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

(i) The purchase price paid by the original Owner of the Residence & Lot when originally purchased from Declarant;

(ii) The agreed upon value of any improvements made to the Residence by anyone other than Declarant;

(iii) The Owner's reasonable moving costs; and

(iv) Any closing costs incurred by the Owner in connection with the purchase of another primary residence within ninety (90) days after closing of repurchase provided for herein.

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein.

(c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Residence and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

(e) Declarant's option to repurchase granted herein with respect to any particular Residence and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Residence and Lot including all applicable tolling periods.

(f) If any provisions of this subsection conflict with any enforceable provisions of a real estate purchase contract between Declarant and the current Owner of a Residence,

the enforceable provisions of such real estate purchase contract shall prevail as to such Owner.

20.6 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarant.

## ARTICLE 21 GENERAL PROVISIONS

21.1 Enforcement. Either the Association or any Owner shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations, and the right to recover damages for such violation; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Association Rules, and any amendments thereto. Failure by the Association, Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

21.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

21.3 Severability. Notwithstanding invalidation of any one of these covenants, conditions or restrictions by judgment or court order, all other provisions hereof shall remain in full force and effect.

21.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of residential units on the Property and for the maintenance of the Property and the Common Areas and Facilities. 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.

21.5 Singular Includes Plural. Whenever the context of this Declaration requires, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

21.6 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result,

and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

21.7 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE SUBDIVISION THAT THE DECLARANT, ASSOCIATION, AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE SUBDIVISION 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 SUBDIVISION.

21.8 Attorneys' Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

21.9 Notices. Any notice to be given to an Owner or Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

a. Notice to an Owner shall be deemed to have been properly delivered when delivered personally, sent by fax or email, or placed in the first class United States mail, 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, then to the street address of such Owner's Lot. Any notice sent by fax or email shall be deemed delivered the earlier of twenty-four (24) hours after being sent or confirmed receipt. Any notice deposited in the mail shall be deemed delivered the earlier of forty-eight (48) hours after such deposit or upon confirmed receipt. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners, on behalf of all co-Owners, and shall be deemed delivered on all such co-Owners.

b. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

21.10 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. Declarant 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 and regulations applicable thereto.

21.11 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates



a personal covenant between the Owner of such Lot and the Association or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

21.12 Non-liability of Officials. To the fullest extent permitted by law, neither the Declarant, the Board, nor any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

IN WITNESS WHEREOF, the Declarant has adopted this Declaration of Covenants, Conditions, and Restrictions for and respecting The Fields at Lakeview IV Homeowners Association on the 13 day of OCTOBER, 2021.

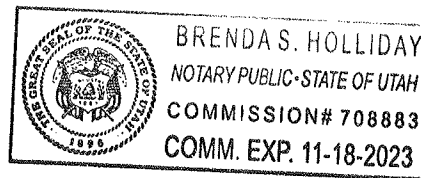
**BOARDWALK INDUSTRIES, LLC**  
A UTAH LIMITED LIABILITY COMPANY

BY: [Signature]  
Name: JEFF MARSELL  
Title: MANAGER

STATE OF UTAH )  
) SS:  
COUNTY OF UTAH SALT LAKE

Subscribed and sworn before me this 13<sup>th</sup> day of Oct., 2021.

[Signature]  
Notary Public



**EXHIBIT A  
LEGAL DESCRIPTION**

All of Plats "F" and "H" for the Fields at Lakeview, including the following:

**List of Parcels:**

39:353:0201 1137 W 1970 SOUTH - OREM  
39:353:0202 1133 W 1970 SOUTH - OREM  
39:353:0203 1131 W 1970 SOUTH - OREM  
39:353:0204 1129 W 1970 SOUTH - OREM  
39:353:0205 1127 W 1970 SOUTH - OREM  
39:353:0206 1123 W 1970 SOUTH - OREM  
39:353:0701 1122 W 1970 SOUTH - OREM  
39:353:0702 1126 W 1970 SOUTH - OREM  
39:353:0703 1128 W 1970 SOUTH - OREM  
39:353:0704 1132 W 1970 SOUTH - OREM  
39:353:0705 1134 W 1970 SOUTH - OREM  
39:353:0706 1136 W 1970 SOUTH - OREM  
39:353:0801 OREM  
39:354:0707 1947 S 1140 WEST - OREM  
39:354:0708 1941 S 1140 WEST - OREM  
39:354:0709 1933 S 1140 WEST - OREM  
39:354:0710 1929 S 1140 WEST - OREM  
39:354:0711 1923 S 1140 WEST - OREM  
39:354:0712 1917 S 1140 WEST - OREM  
39:354:0713 1909 S 1140 WEST - OREM  
39:354:0714 1903 S 1140 WEST - OREM  
39:354:0715 1899 S 1140 WEST - OREM  
39:354:0716 1893 S 1140 WEST - OREM  
39:354:0717 1889 S 1140 WEST - OREM  
39:354:0718 1883 S 1140 WEST - OREM  
39:354:0719 1914 S 1140 WEST - OREM  
39:354:0720 1918 S 1140 WEST - OREM  
39:354:0721 1924 S 1140 WEST - OREM  
39:354:0722 1928 S 1140 WEST - OREM  
39:354:0723 1932 S 1140 WEST - OREM  
39:354:0724 1936 S 1140 WEST - OREM  
39:354:0725 1942 S 1140 WEST - OREM  
39:354:0726 1948 S 1140 WEST - OREM  
39:354:0727 1954 S 1140 WEST - OREM  
39:354:0728 1958 S 1140 WEST - OREM  
39:354:0729 1964 S 1140 WEST - OREM  
39:354:0730 1968 S 1140 WEST - OREM  
39:354:0801 OREM